

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

HSBC Bank, USA

Court of Appeals No. E-12-010

Appellant

Trial Court No. 2009 CV 0305

v.

Robert L. Warner, et al.

DECISION AND JUDGMENT

Appellees

Decided: January 25, 2013

* * * * *

Scott A. King and Terry W. Posey, Jr., for appellant.

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

* * * * *

HANDWORK, J.

{¶ 1} This is an appeal from a judgment issued by the Erie County Court of Common Pleas dismissing a home foreclosure action. Because we conclude that the trial court erred in dismissing the complaint, we reverse and remand.

{¶ 2} Appellant, HSBC Bank USA, National Association as Trustee for Home Equity Loan Trust Series ACE 2006-HE1 (“HSBC”) filed a complaint to enforce a note and foreclose on a mortgage executed by appellees, Robert and Johna Warner (“Warners”). The Warners moved to dismiss the complaint because HSBC had failed to allege that it was both “owner” and “holder” of the note and mortgage. The trial court granted the motion.

{¶ 3} Appellant now appeals from that judgment, arguing the following sole assignment of error:

The Court of Common Pleas erred in dismissing the Complaint.

{¶ 4} This court has previously held that a plaintiff need not allege or establish that it is both the holder and owner of a promissory note to be considered the real party in interest entitled to enforce the note. *See U.S. Bank, N.A. v. Coffey*, 6th Dist. No. E-11-026, 2012-Ohio-721, ¶ 14. Therefore, pursuant to our ruling in *Coffey*, we conclude that the trial court erred in dismissing the complaint. Accordingly, appellant’s assignment of error is well-taken.

{¶ 5} The judgment of the Erie County Court of Common Pleas is reversed and remanded for proceedings consistent with this decision. Appellees are ordered to pay the 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.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

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>.