

[Cite as *Deutsch Bank Natl. Trust Co. v. Triplett*, 2011-Ohio-478.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94924

DEUTSCHE BANK NATIONAL TRUST CO.

PLAINTIFF-APPELLEE

vs.

CHANEL TRIPLETT, ET AL.

DEFENDANTS-APPELLANTS

**JUDGMENT:
REVERSED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-646959

BEFORE: Blackmon, P.J., Sweeney, J., and Gallagher, J.

RELEASED AND JOURNALIZED: February 3, 2011

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PATRICIA ANN BLACKMON, P.J.:

{¶ 1} Appellant Chanel Triplett appeals, pro se, the trial court's decision denying her objections to the magistrate's decision, which found that Deutsche Bank National Trust Company ("Deutsche Bank") was entitled to summary judgment. Triplett assigns the following error for our review:

"I. The trial court erred by not granting my objections. I sold my property to Mr. Jones and to Mr. Watson but the court erred [sic] when he would not let them come before the court to defend their interests in the property I sold to them."

{¶ 2} Having reviewed the record and pertinent law, we reverse the trial court's decision. The apposite facts follow.

{¶ 3} On August 25, 2006, Triplett executed a promissary note and mortgage in favor of Accredited Home Lenders, Inc., for the amount of \$81,000. On August 30, 2006, the mortgage and note were duly recorded. On January 10, 2008, Deutsche Bank as trustee of HSI Asset Securitization Corporation Trust, the successor of Accredited Home Lender, Inc., filed a complaint in foreclosure and alleged that Triplett had defaulted on the mortgage. Deutsche Bank attached a copy of the promissary note and mortgage to the complaint as Exhibits A and B.

{¶ 4} On February 25, 2008, Triplett, having failed to answer the complaint, Deutsche Bank filed a motion for default judgment. Attached to the motion was an affidavit of non-military status, a copy of the promissary note and mortgage, an allonge to the note, a final judicial report, and a

supplemental final judicial report prepared by First American Title Company.

The supplemental final judicial report indicated, among other things, that on January 31, 2008, Accredited Home Lenders, Inc. assigned the note and mortgage to Deutsche Bank, and that it was duly recorded on February 6, 2008.

{¶ 5} On February 29, 2008, with leave of court, Triplett filed her answer and counterclaimed and alleged that Deutsche Bank was a predatory lender. On March 27, 2008, Deutsche Bank responded to Triplett's counterclaim and subsequently propounded written discovery, including interrogatories, requests for production of documents, and admissions.

{¶ 6} On June 16, 2008, Triplett, having failed to respond to discovery, Deutsche Bank filed a motion to compel. On June 23, 2008, Deutsche Bank filed a motion for summary judgment. Deutsche Bank attached, as Exhibit A, the assignment of the note and mortgage. The assignment reflected that all interest in the subject mortgage had been duly assigned to Deutsche Bank, as Trustee for HSI Asset Securitization Corporation Trust 2007-HE1 on January 31, 2008, three weeks after the complaint for foreclosure was filed and was duly recorded in Cuyahoga County as instrument number 200802060108 on February 6, 2008.

{¶ 7} Deutsche Bank also attached an affidavit from Renee Hertzler, an officer of Countrywide Home Loans, its loan servicing agent. Hertzler averred that Triplett's loan account was under her supervision and that there

was a principal balance due in the amount of \$80,504.77 with interest thereon at 9.1% per year from August 1, 2007. Hertzler also averred that Triplett's loan remained in default.

{¶ 8} Thereafter, Triplett filed motions for extension of time to respond to Deutsche Bank's motion for summary judgment and motion to compel discovery, as well as a motion for mediation. On July 30, 2008, the trial court removed the case from its active docket and placed it in the court's mediation program. On November 4, 2008, the case was returned to the trial court's active docket.

{¶ 9} On February 4, 2009, Thomas Jones, Jr. and Michael Troy Watson filed a motion to intervene on the grounds that Triplett had quit claimed her interest in the subject property to them on November 17, 2008. On February 17, 2009, Deutsche Bank opposed the motion and on July 7, 2009, the magistrate issued a decision denying the motion. On August 14, 2009, the trial court adopted the magistrate's decision denying the motion to intervene.

{¶ 10} On February 2, 2010, Deutsche Bank filed an affidavit of ownership, dated March 31, 2009, and attested by David Perez, Assistant Vice President of Countrywide Home Loans, its servicing agent. Perez averred that Deutsche Bank was the owner and holder of the promissary note and mortgage that was attached to the foreclosure complaint. Perez further

averred that Deutsche Bank purchased, acquired, and/or otherwise obtained possession of the note and mortgage on February 1, 2007, prior to the filing of the complaint on January 10, 2008.

{¶ 11} On February 9, 2010, the magistrate issued a decision granting summary judgment in favor of Deutsche Bank. On February 24, 2010, Triplett, Jones, and Watson filed objections to the magistrate's decision. On March 4, 2010, the trial court overruled Triplett's objections on the grounds that it was untimely filed. On March 19, 2010, the trial court adopted the magistrate's decision granting summary judgment in favor of Deutsche Bank. Triplett now appeals.

Deutsche Bank's Standing

{¶ 12} In the sole assigned error, Triplett argues the trial court erred in adopting the magistrate's decision, which granted summary judgment in favor of Deutsche Bank. However, before we address Triplett's claim, we must determine whether Deutsche Bank was a real party in interest, such that it had standing to file and maintain this lawsuit pursuant to the case law in this district. The case law in the 8th District is simple and clear; the putative mortgagee must own the mortgage at the time of the filing of the complaint, otherwise it lacks standing. *Wells Fargo Bank, N.A. v. Jordan*, Cuyahoga App. No. 91675, 2009-Ohio-1092. The relevant inquiry hinges on

whether sufficient evidence exists in this record to comply with *Jordan* and its progenies.

{¶ 13} The magistrate's decision granting summary judgment in favor of Deutsche Bank, stated in pertinent part as follows:

“The Magistrate finds that, although the mortgage assignment to the Plaintiff was executed after the filing of Plaintiff's Complaint herein, Plaintiff has submitted sufficient evidence that it was the owner in possession of both the note and the mortgage prior to the filing of the Complaint and the execution of the assignment. Accordingly, the Magistrate finds that Plaintiff was the owner of both the note and mortgage when the case was filed and has standing to bring this case.”

Magistrate's Decision, February 9, 2010.

{¶ 14} “Every action shall be prosecuted in the name of the real party in interest.” *Deutsche Bank Natl. Trust Co. v. Pagani*, 5th Dist. No. 09CA000013, 2009-Ohio-5665; Civ.R. 17(A). A real party in interest is one who is directly benefitted or injured by the outcome of the case. *U.S. Bank Natl. Assn. v. Marcino*, 181 Ohio App.3d 328, 2009-Ohio-1178, 908 N.E.2d 1032, citing *Shealy v. Campbell* (1985), 20 Ohio St.3d 23, 24, 485 N.E.2d 701.

{¶ 15} The real-party-in-interest requirement, “enables the defendant to avail himself of evidence and defenses that the defendant has against the real party in interest, and to assure him finality of the judgment, and that he will be protected against another suit brought by the real party at interest on the same matter.” *Id.*, *Shealy* at 24-25, quoting *In re Highland Holiday Subdivision* (1971), 27 Ohio App.2d 237, 273 N.E.2d 903. The current holder of the note and mortgage is the real party in interest in a foreclosure action. *Wells Fargo Bank, N.A. v. Stovall*, Cuyahoga App. No. 91802, 2010-Ohio-236, citing *Chase Manhattan Mtge. Corp. v. Smith*, 1st Dist. No. C061069, 2007-Ohio-5874.

{¶ 16} In the instant case, since it is undisputed that the assignment of the mortgage was executed and recorded after Deutsche Bank filed its foreclosure complaint, then the only evidence in the record that the Magistrate could have relied on to conclude that Deutsche Bank was a real party in interest was the affidavit of ownership dated March 31, 2009 and filed February 2, 2010. Thus, our resolution hinges on whether an affidavit of ownership, standing alone, is sufficient to satisfy *Jordan*.

{¶ 17} In *U.S. Bank Natl. Assn. v. Duvall*, Cuyahoga App. No. 94714, 2010-Ohio-6478, this Court’s recent decision affirming the trial court’s dismissal of a foreclosure complaint involving facts substantially similar to the present case, we rejected an affidavit that stated the plaintiff acquired the

note and mortgage prior to the filing of the complaint. Likewise, Deutsche Bank's affidavit of ownership, sworn out more than a year after the foreclosure complaint was filed, is insufficient to vest the bank with standing to file and maintain the action. Thus, if Deutsche Bank had offered no evidence that it owned the note and mortgage when the complaint was filed, it would not be entitled to judgment as a matter of law. *Jordan*, ¶¶ 22-23. Accordingly, we reverse the trial court's decision because Deutsche Bank lacks standing.

Judgment reversed.

It is ordered that appellants recover from appellees their costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

PATRICIA ANN BLACKMON, PRESIDING JUDGE

JAMES J. SWEENEY, J., and
SEAN C. GALLAGHER, J., CONCUR