

[Cite as *Deutsche Bank Natl. Trust Co. v. Shatteen*, 2015-Ohio-1841.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 101923**

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**DEUTSCHE BANK  
NATIONAL TRUST COMPANY**

PLAINTIFF-APPELLEE

vs.

**LINDA SHATTEEN, ET AL.**

DEFENDANTS-APPELLANTS

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**JUDGMENT:  
AFFIRMED**

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Civil Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CV-05-574149

**BEFORE:** Laster Mays, J., Keough, P.J., and Blackmon, J.

**RELEASED AND JOURNALIZED:** May 14, 2015

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ANITA LASTER MAYS, J.:

{¶1} Defendant-appellant Linda Shatteen (“Shatteen”) appeals the trial court’s denial of her motion to vacate the judgment granted to plaintiff-appellee Deutsche Bank National Trust Company (“Deutsche”) in a foreclosure case filed in 2005. Shatteen’s single assignment of error claims that the trial court improperly denied her motion. For the reasons that follow, we conclude that the claim lacks merit, the assignment of error is overruled. We affirm.

{¶2} This case has an extensive history. In 2003, Shatteen executed a mortgage and promissory note to Aames Funding Corporation d.b.a. Aames Home Loan (“Aames”) for residential property located at 32205 Creekside Drive, Pepper Pike, Ohio. Aames assigned the mortgage to Countrywide Home Loans, Inc. (“Countrywide”), as attorney in fact for Aames, and Countryside subsequently assigned the mortgage to Deutsche. Deutsche filed the foreclosure action against Shatteen on October 5, 2005. On June 11, 2008, the trial court adopted the magistrate’s decision and granted summary judgment to Deutsche. Shatteen did not file an appeal of the trial court’s order.

{¶3} On June 25, 2008, the trial court issued an order of sale of the property. On August 11, 2008, Deutsche purchased the property at a sheriff’s auction. On May 6, 2009, the trial court confirmed the sale.

{¶4} Shatteen subsequently filed a series of motions, including one for bankruptcy on May 8, 2009. The trial court issued a series of stays in response.

{¶5} On October 26, 2010, after the trial court dissolved another stay, the court reconfirmed the sale. Nevertheless, on February 7, 2011, the trial court granted yet another of Shatteen's motions for a stay.

{¶6} On April 19, 2011, Shatteen filed a motion to vacate the 2008 order of sale. On July 19, 2011, the trial court denied her motion. Shatteen subsequently filed an appeal in this court, but her appeal was dismissed for failure to file an appellate brief.

{¶7} On October 17, 2012, in response to Shatteen's additional pro se motions for "summary judgment" and another "stay of foreclosure sale," the trial court issued a journal entry in the case that provided the following brief recitation of pertinent events through 2012:

The instant case was filed on October 5, 2005. After substantial litigation, a magistrate's decision was issued on May 16, 2008 and adopted without objection on June 11, 2008. Ms. Shatteen, through counsel and pro se, has filed at least four motions for relief from judgment pursuant to Civil Rule 60(B), which were all denied. Ms. Shatteen has also filed an appeal, which was dismissed, and a motion for reconsideration in the court of appeals, which was denied. The purpose of a court is to resolve controversies, not to prolong them. When issues are constantly relitigated, there is no resolution and hence no finality. Further, "in the context of a post judgment matter, actions that purport to reconsider or alter a final judgment are a nullity." Ms. Shatteen's pending motions are therefore nullities, having been filed after judgment and not contemplated as post judgment filings by the Rules of Civil Procedure. Plaintiff's motion to strike, filed August 31, 2012, is therefore moot. Plaintiff's motion to lift the February 7, 2011 court ordered stay of execution, filed August 8, 2012, is granted. Plaintiff may proceed with execution on the judgment rendered herein. Notice issued.

(Citations omitted.)

{¶8} Shatteen filed “objections” to the entry where she raised the issue of Deutsche’s standing for the first time, based on this court’s decision in *Wells Fargo Bank, N.A. v. Jordan*, 8th Dist. Cuyahoga No. 91675, 2009-Ohio-1092. The trial court treated the filing as a motion to vacate the judgment and required Deutsche to brief the issue.<sup>1</sup>

{¶9} On October 22, 2012, Shatteen filed a separate action against Deutsche, reiterating the claims initially raised in her objections.<sup>2</sup> The trial court denied Shatteen’s motion to consolidate the two cases; the trial court held that Deutsche’s foreclosure action could not be consolidated because it was no longer pending. Shatteen appealed, but this court dismissed her appeal on June 2, 2014.

{¶10} On August 14, 2014, the trial court denied Shatteen’s latest motion to vacate the judgment. The trial court confirmed Deutsche’s standing in the foreclosure action and reiterated that the case had been fully adjudicated by final judgment rendered on June 11, 2008.

{¶11} Shatteen filed the instant appeal from that decision. In her sole assignment of error, she claims on the basis that Deutsche lacked standing to bring the foreclosure action that the trial court acted improperly in denying her motion to vacate the judgment in Deutsche’s favor.

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<sup>1</sup>Because this motion did not meet the requirements for a Civ.R. 60(B) motion, however, the trial court should have simply overruled it. *CitiMortgage, Inc. v. Jackson*, 8th Dist. Cuyahoga No. 101187, 2014-Ohio-4095.

<sup>2</sup>That action was dismissed without prejudice on April 22, 2014.

{¶12} In *Bank of Am., N.A. v. Kuchta*, 141 Ohio St.3d 75, 2014-Ohio-4275, 21 N.E.3d 1040, ¶ 25, Bank of America moved for summary judgment on August 10, 2010. The Kuchtas did not respond to the summary judgment motion. After a series of unsuccessful attempts to settle the matter, the trial court granted summary judgment to Bank of America and entered a decree of foreclosure in its favor in June 2011. The Kuchtas did not appeal. Subsequently, on September 23, 2011, the Kuchtas moved to vacate the summary judgment and decree of foreclosure pursuant to Civ.R. 60(B)(3). The Kuchtas argued that Bank of America lacked standing. Their appeal followed. The court ruled in *Kuchta* at ¶ 15, that, because the issue of standing could have been and in fact was raised during the foreclosure proceedings, res judicata prevented the Kuchtas from using the issue to establish entitlement to relief.

{¶13} This court recently addressed the issue of a collateral attack against a mortgagee based on lack of standing in *US Bank N.A. v. Alex*, 8th Dist. Cuyahoga No. 101276, 2015-Ohio-871. Similarly to the facts presented herein, in *Alex*, the bank filed a foreclosure action in August 2009 and obtained a default judgment against the mortgagor, but, after attempts to sell the property proved unsuccessful, the trial court granted the bank's motion to allow the parties time to modify the mortgage. Mediation between the parties ultimately failed; the property was sold and the bank filed for confirmation. The homeowner appealed from the order of confirmation and assigned as error the issue of the mortgagee's standing.

{¶14} We observed in *Alex* that there are two appealable judgments in foreclosure actions: the foreclosure judgment and the confirmation of sale. This court noted at ¶ 7, citing *CitiMortgage, Inc. v. Roznowski*, 139 Ohio St.3d 299, 2014-Ohio-1984, 11 N.E.3d 1140:

Once the order of foreclosure is final and the appeals process has been completed, all rights and responsibilities of the parties have been determined and can no longer be challenged.

{¶15} Citing *Kuchta*, 141 Ohio St.3d 75, 2014-Ohio-4275, 21 N.E.3d 1040, ¶ 25, this court further determined in *Alex* at ¶ 15, that Alex’s argument was precluded by the doctrine of res judicata:

In *Kuchta*, the Ohio Supreme Court held that lack of standing is an issue that is cognizable on appeal and, therefore, it cannot be used to collaterally attack a judgment in foreclosure. The homeowners in *Kuchta* could not rely on a standing argument to vacate an adverse foreclosure judgment pursuant to Civ.R. 60(B)(3) because the rule cannot be used as a substitute for an appeal.<sup>3</sup>

{¶16} The trial court entered the foreclosure judgment in this case on June 11, 2008, confirmed the sale in 2008, and reconfirmed the sale in 2012. Deutsche acquired title to the property in 2012. Because Shatteen failed to appeal either of the 2008 judgments, her claim is barred by res judicata and the trial court’s judgments are not subject to this collateral attack. *Kuchta, supra*, at ¶ 14. Shatteen’s assignment of error is overruled.

{¶17} The trial court’s order is affirmed.

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<sup>3</sup>The court also held that, even if the plaintiff lacked standing, that fact does not render a judgment void for lack of subject matter jurisdiction. *Kuchta* at ¶ 25.

It is, therefore, ordered that appellee recover from appellant costs herein taxed.

The court finds there were no 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.

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ANITA LASTER MAYS, JUDGE

KATHLEEN ANN KEOUGH, P.J., and  
PATRICIA ANN BLACKMON, J., CONCUR