

[Cite as *U.S. Bank, N.A. v. Lavette*, 2015-Ohio-765.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101348

U.S. BANK, NATIONAL ASSOCIATION

PLAINTIFF-APPELLEE

vs.

CARL LAVETTE, ET AL.

DEFENDANTS-APPELLANTS

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-13-814836

BEFORE: S. Gallagher, P.J., Blackmon, J., and E.T. Gallagher, J.

RELEASED AND JOURNALIZED: March 5, 2015

ATTORNEYS FOR APPELLANTS

Marc E. Dann
Grace M. Doberdruk
The Dann Law Firm Co., L.P.A.
P.O. Box 6031040
Cleveland, OH 44103

ATTORNEYS FOR APPELLEE

John E. Codrea
Manley, Deas & Kochalski, L.L.C.
P.O. Box 165028
Columbus, OH 43216

Robert C. Folland
Barnes & Thornburg, L.L.P.
41 South High Street
Suite 3300
Columbus, OH 43215

John B. Kopf
Thompson Hine, L.L.P.
41 South High Street, 17th Floor
Columbus, OH 43215

SEAN C. GALLAGHER, P.J.:

{¶1} Defendant Carl LaVette appeals the trial court's decision granting summary judgment upon the foreclosure action in the bank's favor. For the following reasons, we affirm.

{¶2} This is a simple action in foreclosure. The plaintiff, U.S. Bank, National Association, as Successor Trustee to Bank of America, N.A., as Successor to LaSalle Bank, N.A., as Trustee for the Holders of Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2006-FF1 ("U.S. Bank"), filed a complaint alleging the right to foreclose on LaVette's residential property and seeking a judgment upon the promissory note after LaVette defaulted. A copy of the mortgage, note, and assignment were attached to the complaint. There were other named defendants, although none appealed or contested the summary judgment decision in U.S. Bank's favor. LaVette appealed the trial court's decision, advancing four assignments of error, none of which have merit.

{¶3} In his first and third assignments of error, LaVette claims the trial court erred in excluding him from a default judgment hearing, held to resolve the claims against the third parties with potential lien interests in the residential property, and also erred because U.S. Bank improperly identified itself in the complaint. LaVette's claims are supported neither by the record nor with reasons and citations pursuant to App.R. 16(A)(7). LaVette failed to support his claim with any citations to the record demonstrating that the trial court precluded him from attending the default hearing. Even if LaVette's claims of exclusion are true, he has not cited any authority or provided any reason in support of his claim that the trial court abused its discretion in excluding him from the default hearing. App.R. 16(A)(7). Further, his discussion regarding whether U.S. Bank improperly identified itself in the complaint is incomprehensible. The plaintiff used the same corporate name, as listed on the assignment of the note and mortgage,

throughout the entirety of the trial court proceedings, including the complaint. LaVette's first and third assignments of error are overruled.

{¶4} In LaVette's second and fourth assignments of error, he claims the trial court erred by relying on an affidavit signed by a representative from the loan servicing company as evidence supporting U.S. Bank's motion for summary judgment. LaVette's final two assignments of error are without merit. Appellate review of summary judgment is de novo, governed by the standard set forth in Civ.R. 56. *Comer v. Risko*, 106 Ohio St.3d 185, 2005-Ohio-4559, 833 N.E.2d 712, ¶ 8.

Summary judgment may be granted only when (1) there is no genuine issue of material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) viewing the evidence most strongly in favor of the nonmoving party, reasonable minds can come to but one conclusion and that conclusion is adverse to the nonmoving party.

Marusa v. Erie Ins. Co., 136 Ohio St.3d 118, 2013-Ohio-1957, 991 N.E.2d 232, ¶ 7.

{¶5} LaVette superficially advanced several propositions in these assignments of error, such as the loan servicing company's representative lacked firsthand information, the note attached was a copy of a copy, and the original note was never introduced into evidence. None of those claims was supported by citations to authority as required by App.R. 16(A)(7). Further, LaVette's conclusory citations to *HSBC Mtge. Servs. Inc. v. Edmon*, 6th Dist. Erie No. E-11-046, 2012-Ohio-4990, and *Wachovia Bank of Delaware, N.A. v. Jackson*, 5th Dist. Stark No. 2010-CA-00291, 2011-Ohio-3203, are unpersuasive. In those cases, the Fifth and Sixth Districts held that an affiant must include specific statements describing how she obtained the firsthand information and reviewed the original complaint. This court overruled similar arguments in *Wells Fargo Bank, N.A. v. Hammond*, 8th Dist. Cuyahoga No. 100141, 2014-Ohio-5270 (there is no requirement that the affiant explain the basis of the firsthand

knowledge), and we will not further address the issue based on blanket citations made without any supporting analysis.

{¶6} LaVette’s claim that the affidavit presented by U.S. Bank was insufficient because the affiant authenticated copies of the electronically stored duplicates of the original — a copy of a copy — and did not contain an averment about U.S. Bank possessing the note is not supported by the record. *See, e.g., Deutsche Bank Natl. Trust Co. v. Dvorak*, 9th Dist. Summit No. 27120, 2014-Ohio-4652, ¶ 14.¹ In this case, U.S. Bank’s representative averred based on personal knowledge that U.S. Bank possessed the promissory note executed by LaVette currently and before the filing of the complaint, and authenticated copies of the electronically stored duplicates of the originals. Nothing facially indicates that the affiant lacked firsthand knowledge to aver the electronically stored copy of the note, duplicated the original note, or that U.S. Bank possessed the note for purposes of filing and prosecuting the foreclosure.

{¶7} LaVette further failed to support his argument, that the original note must be included in the record in order for U.S. Bank to proceed to summary judgment, with any citations to authority. Generally in Ohio, copies of a note, mortgage, or an assignment of a mortgage are sufficient to establish holder status and grant judgment in foreclosure. *Wells Fargo Bank, N.A. v. Murphy*, 7th Dist. Mahoning No. 13 MA 35, 2014-Ohio-2937, ¶ 23, citing Evid.R. 1003. “A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original.” Evid.R. 1003; *Am. Savs. Bank v. Wrage*, 4th Dist. Scioto No. 13CA3566, 2014-Ohio-2168, ¶ 21; *Kyrkos v. Pappas*, 8th Dist. Cuyahoga No. 83502,

¹*Dvorak* is factually distinguishable: the affidavits were insufficient because the affiant relied on documents not attached to the affidavits and failed to state when the plaintiff took possession of the note.

2004-Ohio-5025, ¶ 6; *Culkar v. Fanter*, 8th Dist. Cuyahoga No. 56073, 1989 Ohio App. LEXIS 5074, *7 (Nov. 2, 1989). LaVette bore the burden of demonstrating a genuine question as to the authenticity of the duplicate copy of the note introduced for the purposes of summary judgment. Having failed to meet that burden, we cannot find error.

{¶8} Notwithstanding, when distilled to its simplest form based on the arguments advanced, the crux of LaVette’s assigned errors is that a representative from the loan servicing corporation cannot provide the evidence satisfying a plaintiff’s burden upon summary judgment in a foreclosure action. On this point, LaVette is mistaken. In Ohio, an affidavit from a representative of the loan servicing company on behalf of the holder of the note and mortgage suffices for the purposes of resolving any motion for summary judgment. *See, e.g., Fifth Third Mtge. Co. v. Salahuddin*, 10th Dist. Franklin No. 13AP-945, 2014-Ohio-3304, ¶ 15 (summary judgment based on an affidavit from a loan servicing company’s representative affirmed), citing *Regions Bank v. Seimer*, 10th Dist. Franklin No. 13AP-542, 2014-Ohio-95, ¶ 19; *Chase Home Fin., L.L.C. v. Dougherty*, 10th Dist. Franklin No. 12AP-546, 2013-Ohio-1464; *Deutsche Bank Natl. Trust Co. v. Germano*, 11th Dist. Portage No. 2012-P-0024, 2012-Ohio-5833; *JP Morgan Chase Bank, NA v. Ackerman*, 5th Dist. Richland No. 13CA17, 2013-Ohio-5010.

{¶9} In support of a motion for summary judgment in a foreclosure action, a plaintiff must demonstrate with “evidentiary-quality materials”: (1) the plaintiff is the holder of the note and mortgage or is otherwise entitled to enforce the instrument; (2) the chain of assignments and transfers if applicable; (3) the mortgagor defaulted; (4) all conditions precedent have been met; and (5) the amount due. *Hammond*, 8th Dist. Cuyahoga No. 100141, 2014-Ohio-5270, ¶ 19, citing *HSBC Bank U.S.A., N.A. v. Surrarrer*, 8th Dist. Cuyahoga No. 100039, 2013-Ohio-5594, ¶ 16, and *U.S. Bank, N.A. v. Adams*, 6th Dist. Erie No. E-11-070, 2012-Ohio-6253, ¶ 10.

{¶10} In this case, U.S. Bank averred that it was in possession of the note and mortgage and attached a copy of the mortgage, the note, and the assignment to the complaint. In its motion for summary judgment, U.S. Bank included the affidavit of Meldin Rhodes, a representative of the loan servicing corporation handling U.S. Bank's interest in the note and mortgage. Rhodes averred, based on personal knowledge, that U.S. Bank was the current holder of the note and mortgage and was owed an amount certain after LaVette defaulted on his obligation to repay the loan. Copies of the note and mortgage were authenticated and attached to the affidavit, along with the assignment to U.S. Bank as required pursuant to Civ.R. 56(E). In short, U.S. Bank's motion for summary judgment was not lacking proper evidentiary support and LaVette did not otherwise challenge the trial court's decision. We accordingly overrule LaVette's final two assignments of error.

{¶11} The judgment of the trial court in favor of U.S. Bank is affirmed.

It is ordered that appellee recover of appellants costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas 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.

SEAN C. GALLAGHER, PRESIDING JUDGE

PATRICIA ANN BLACKMON, J., and
EILEEN T. GALLAGHER, J., CONCUR