[Cite as *U.S. Bank, N.A. v. Matthews*, 2017-Ohio-4075.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105011

U.S. BANK, N.A.

PLAINTIFF-APPELLEE

vs.

BRUCE B. MATTHEWS, ET AL.

DEFENDANTS-APPELLANTS

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-15-844003

BEFORE: E.A. Gallagher, P.J., Stewart, J., and Jones, J.

RELEASED AND JOURNALIZED: June 1, 2017

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EILEEN A. GALLAGHER, P.J.:

{¶1} In this foreclosure action, defendants-appellants Bruce and Rhondalyn Matthews (collectively, "appellants") appeal from the trial court's decision granting summary judgment in favor of plaintiff-appellee U.S. Bank, N.A., as trustee, successor in interest to Wachovia Bank, N.A., as trustee for GSMPS Mortgage Loan Trust 2005-RP3 (the "trust") ("U.S. Bank"). Appellants claim that genuine issues of material fact exist as to U.S. Bank's standing and entitlement to foreclose on the mortgage at issue. Finding no merit to the appeal, we affirm the trial court's judgment.

Factual and Procedural Background

{¶2} On August 29, 2002, appellants executed a note payable to American Midwest Mortgage Corporation ("American Midwest Mortgage") for the principal amount of $132,900 plus interest at the rate of 7.0% per year (the "note"). To secure payment of the note, appellants executed an open-end mortgage on real property located at 3372 Silsby Road, Cleveland Heights, Ohio (the "property") in favor of American Midwest Mortgage (the "mortgage").

{¶3} Through a series of transactions, the note and mortgage were transferred and assigned to U.S. Bank. On August 29, 2002, American Midwest Mortgage endorsed the note to Washington Mutual Bank, F.A. ("Washington Mutual") in an endorsement rubber-stamped at the bottom of the note (the "rubber-stamped endorsement") and also assigned all of its "rights, title and interest" in the mortgage to Washington Mutual. Washington Mutual thereafter endorsed the note in blank in an allonge attached to the

note (the "allonge"). The mortgage and assignment of mortgage were recorded on September 4, 2002.

{¶4} On April 5, 2005, appellants and Washington Mutual entered into a loan modification agreement that increased the unpaid principal amount due under the note to $140,872.68 (the "2005 loan modification agreement"). Two-and-a-half years later, appellants and Wells Fargo Bank, N.A. ("Wells Fargo"), the servicing agent for the trust, entered into a second loan modification agreement, increasing the unpaid principal due under the note to $148,255.68 and extending its maturity date (the "2007 loan modification agreement"). On August 3, 2009, appellants and Wells Fargo entered into a third loan modification agreement, increasing the unpaid principal amount due under the note to $157,148.91, reducing the interest rate to 5.625% per year and again extending the maturity date (the "2009 loan modification agreement"). (The 2005 loan modification agreement, 2007 loan modification agreement and 2009 loan modification agreement are collectively referred to herein as the "loan modification agreements").

{¶5} On March 13, 2015, Wells Fargo, as attorney-in-fact for the Federal Deposit Insurance Corporation ("FDIC") as receiver for Washington Mutual Bank, Henderson, NV, f.k.a. Washington Mutual, executed a "corrective assignment of mortgage" assigning the mortgage to U.S. Bank (the "corrective assignment of mortgage"). (The original assignment of mortgage and the corrective assignment of mortgage are collectively referred to herein as the "assignments of mortgage.") The corrective assignment of mortgage was recorded on March 25, 2015.

{¶6} Appellants failed to make the payments due under the note as modified by the loan modification agreements and, on April 10, 2015, U.S. Bank filed a complaint in foreclosure.[1] The complaint alleged that U.S. Bank was the holder of the note and assignee of the mortgage, that appellants had defaulted under the terms of the note and loan modification agreements and that U.S. Bank had accelerated the debt, had complied with all conditions precedent and was entitled to enforce the note and foreclose on the mortgage. U.S. Bank averred that plaintiffs had filed a Chapter 7 bankruptcy and that it sought "no personal judgment," only the foreclosure and sale of the property. U.S. Bank alleged that it was due $151,942.96 together with interest at the rate of 5.625% from February 1, 2012, court costs, advances "and other charges as allowed by law." U.S. Bank requested a finding of default, that the mortgage be declared a valid first lien on the property, that the mortgage be foreclosed and the property sold and that it be paid the amount due it out of the proceeds of sale. Copies of the note (along with the rubber-stamped endorsement from American Midwest Mortgage to Washington Mutual and the allonge endorsing the note in blank), the mortgage, the loan modification agreements and the assignments of the mortgage were attached to the complaint.

{¶7} On December 21, 2015, appellants filed an answer, pro se, denying the allegations of the complaint and asserting a laundry list of "affirmative defenses," including failure to state a claim for which relief can be granted, lack of standing, waiver,

[1]U.S. Bank also named the United States of America as a defendant on the basis that it might claim an interest in the property.

release, estoppel, breach of contract, failure to join necessary parties, failure to mitigate damages, failure or want of consideration and unconscionability.

U.S. Bank's Motion for Summary Judgment

{¶8} On February 12, 2012, U.S. Bank filed a motion for summary judgment. U.S. Bank asserted that it was entitled to judgment and a decree of foreclosure as a matter of law because there was no genuine issue of material fact that (1) U.S. Bank was the current holder of the note and assignee of the mortgage, (2) appellants' loan was in default, (3) U.S. Bank had provided appellants with notice of default and an opportunity to cure but the default had not been cured, (4) U.S. Bank had exercised its option to accelerate the balance due on the note, (5) a principal balance of $151,942.96 plus interest at the rate of 5.625% per year from February 1, 2012 was due on the note and (6) appellants could not establish any of their claimed affirmative defenses.

{¶9} U.S. Bank supported its motion with an affidavit from Cynthia Thomas, vice president of loan documentation for Wells Fargo. Attached to her affidavit were copies of the note (along with the rubber-stamped endorsement and the allonge endorsing the note in blank), the mortgage, the assignments of mortgage, the loan modification agreements and a notice of default and intent to accelerate (the "notice of default"). Thomas attested that the copies of the note, mortgage, assignments of mortgage, loan modification agreements and notice of default attached to her affidavit were copies of the originals "redacted solely to protect any private, personal, financial information" and that at the time of the filing of the complaint (and through the date of her affidavit), U.S. Bank

had possession of the note (along with the allonge endorsed in blank). She further attested that payments had not been made as required under the terms of the note and mortgage, that the last payment was made on February 26, 2012 and that prior to the filing of the complaint, appellants had been sent a notice of default but the default had not been cured. She indicated that as a result of the default and acceleration, a principal balance of $151,942.96 plus interest at the rate of 5.625% per year from February 1, 2012 was due on the note.

{¶10} Appellants did not oppose U.S. Bank's summary judgment motion. On March 18, 2016, the magistrate issued a decision granting summary judgment and a decree of foreclosure in favor of U.S. Bank. On April 7, 2016, appellants filed objections to the magistrate's decision. U.S. Bank moved to strike the objections on the grounds that (1) they were untimely and (2) although they were purportedly filed by appellants pro se (appellants signed the certificate of service), the objections were signed, in the form of an electronic signature, by counsel who had not filed a notice of appearance in the case and failed to include his attorney registration number and contact information as required under Civ.R. 11. Appellants did not oppose the motion to strike. The trial court granted the motion to strike and, on August 30, 2016, issued a judgment entry adopting the magistrate's decision and entering summary judgment and a decree of foreclosure in favor of U.S. Bank.

{¶11} Appellants appealed the trial court's judgment, raising the following two assignments of error for review:

> Assignment of Error No. 1:
> Reviewing Appellee's Motion for Summary Judgment *de novo*, the record is clear and convincing that the trial court erred to the prejudice of the Appellants by granting the Appellee's Motion for Summary Judgment.
>
> Assignment of Error No. 2:
> The trial court erred to the prejudice of Appellants by gra[n]ting the Appellee's Motion for Summary Judgment based upon the presence of genuine issues of material fact regarding the Appellee-Plaintiff's failure to provide sufficient evidence of entitlement to foreclosure and/or damages.

Appellants' assignments of error are interrelated and will be addressed together.

Law and Analysis

Standard of Review

{¶12} Normally, we review a trial court's decision granting summary judgment de novo, applying the same standard as the trial court. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996). We accord no deference to the trial court's decision and independently review the record to determine whether summary judgment is appropriate. In this case, however, because appellants failed to timely object to the magistrate's decision, our review is limited to plain error.[2] *See* Civ.R. 53(D)(3)(b)(iv); *see also Huntington Natl. Bank v. Cade*, 8th Dist. Cuyahoga No.103674, 2016-Ohio-4705, ¶ 9; *Huntington Natl. Bank v. Blount*, 8th Dist. Cuyahoga No. 98514, 2013-Ohio-3128, ¶ 10.

{¶13} Civ.R. 53 imposes an affirmative duty on parties to submit timely, specific, written objections to the trial court, identifying any error of fact or law in the magistrate's

[2]Appellants do not assign as error the trial court's granting of U.S. Bank's motion to strike their objections to the magistrate's decision.

decision. *See* Civ.R. 53(D)(3)(b)(i) (requiring parties to object to a magistrate's decision within 14 days of its filing); *Blount* at ¶ 11; *Hameed v. Rhoades*, 8th Dist. Cuyahoga No. 94267, 2010-Ohio-4894, ¶ 14. Civ.R. 53(D)(3)(b)(iv) provides:

> Except for a claim of plain error, a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party has objected to that finding or conclusion as required by Civ.R. 53(D)(3)(b).

{¶14} Thus, "'when a party fails to properly object to a magistrate's decision in accordance with Civ.R. 53(D)(3), the party has forfeited the right to assign those issues as error on appeal.'" *Mayiras v. Sunrise Motors Inc.*, 9th Dist. Summit No. 27931, 2017-Ohio-279, ¶ 16, quoting *Adams v. Adams*, 9th Dist. Wayne No. 13CA0022, 2014-Ohio-1327, ¶ 6.

{¶15} When applying the plain error doctrine in the civil context, the Ohio Supreme Court has stated that reviewing courts "must proceed with the utmost caution." *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 121, 679 N.E.2d 1099 (1997). "Plain errors are errors in the judicial process that are clearly apparent on the face of the record and are prejudicial to the appellant." *Macintosh Farms Community Assn. v. Baker*, 8th Dist. Cuyahoga No. 102820, 2015-Ohio-5263, ¶ 8, citing *Reichert v. Ingersoll*, 18 Ohio St.3d 220, 223, 480 N.E.2d 802 (1985). The doctrine is limited to those "extremely rare cases" in which "exceptional circumstances require its application to prevent a manifest

miscarriage of justice, and where the error complained of, if left uncorrected, would have a materially adverse effect on the character of, and public confidence in, judicial proceedings." *Goldfuss* at 121. This is not that case. Appellants have not claimed plain error, and upon review of the record, we find no plain error in the trial court's entry of summary judgment in this case.

{¶16} Appellants argue that the trial court erred in granting U.S. Bank's motion for summary judgment because U.S. Bank failed to present sufficient evidence establishing its right to foreclose on the property. In their first assignment of error, appellants contend that U.S. Bank failed to show that it had standing to bring the foreclosure action and was the "legal and proper 'holder' of the Note and Mortgage." In their second assignment of error, appellants claim that the trial court erred in entering summary judgment because U.S. Bank failed to submit a "competent, credible 'payment history'" and that, therefore, there were genuine issues of fact regarding appellants' default and the amount due. Appellants' arguments are meritless.

Summary Judgment in a Foreclosure Action

{¶17} Under Civ.R. 56, summary judgment is appropriate when (1) no genuine issue as to any material fact exists, (2) the party moving for summary judgment 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 reach only one conclusion that is adverse to the nonmoving party.

{¶18} On a motion for summary judgment, the moving party carries an initial burden of identifying specific facts in the record that demonstrate its entitlement to summary judgment. *Dresher v. Burt*, 75 Ohio St.3d 280, 292-293, 662 N.E.2d 264 (1996). If the moving party fails to meet this burden, summary judgment is not appropriate; if the moving party meets this burden, the nonmoving party has the reciprocal burden to point to evidence of specific facts in the record demonstrating the existence of a genuine issue of material fact for trial. *Id.* at 293. Summary judgment is appropriate if the nonmoving party fails to meet this burden. *Id.*

{¶19} To prevail on a motion for summary judgment in a foreclosure action, the plaintiff must prove: (1) that the plaintiff is the holder of the note and mortgage or is otherwise entitled to enforce the instrument; (2) if the plaintiff is not the original mortgagee, the chain of assignments and transfers; (3) that the mortgagor is in default; (4) that all conditions precedent have been met, and (5) the amount of principal and interest due. *Bank of N.Y. Mellon v. Walker*, 8th Dist. Cuyahoga No. 104430, 2017-Ohio-535, ¶ 30; *Deutsche Bank Natl. Trust Co. v. Najar*, 8th Dist. Cuyahoga No. 98502, 2013-Ohio-1657, ¶ 17.

Affidavit in Support of Motion for Summary Judgment

{¶20} Appellants first challenge the evidentiary sufficiency of the affidavit U.S. Bank submitted in support of its summary judgment motion. Appellants claim that Thomas' affidavit "failed on its face to warrant summary judgment" and should not have been relied upon by the trial court in ruling on U.S. Bank's motion for summary judgment

motion because Thomas was an employee representative of Wells Fargo, not U.S. Bank, and the affidavit lacked "credibility and substantiation," was based on inadmissible hearsay and failed to demonstrate the particular basis upon which Thomas claimed "personal knowledge" of the relevant facts.

{¶21} Civ.R. 56(E) sets forth the requirements for affidavits submitted on summary judgment. It provides, in relevant part:

> Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit. Sworn or certified copies of all papers or parts of papers referred to in an affidavit shall be attached to or served with the affidavit. * * *

{¶22} "'Unless controverted by other evidence, a specific averment that an affidavit pertaining to business is made upon personal knowledge of the affiant satisfies the Civ.R. 56(E) requirement that affidavits both in support or in opposition to motions for summary judgment show that the affiant is competent to testify to the matters stated.'" *Najar,* 2013-Ohio-1657, at ¶ 20, quoting *Bank One, N.A. v. Swartz,* 9th Dist. Lorain No. 03CA008308, 2004-Ohio-1986, ¶ 14, citing *State ex rel. Corrigan v. Seminatore,* 66 Ohio St.2d 459, 423 N.E.2d 105 (1981), paragraph two of the syllabus. There is no requirement that an affiant explain the basis for his or her personal knowledge where personal knowledge can be reasonably inferred based on the affiant's position and other

facts contained in the affidavit. *Bank of Am. v. Lynch,* 8th Dist. Cuyahoga No. 100457, 2014-Ohio-3586, ¶ 27, citing *Nationstar Mtge., L.L.C. v. Perry*, 8th Dist. Cuyahoga No. 99497, 2013-Ohio-5024, ¶ 15; *Najar* at ¶ 74.

{¶23} Thomas' affidavit indicates that she is a vice president of loan documentation for Wells Fargo, that "[i]n the regular performance [her] job functions" she is "familiar with [the] business records maintained by Wells Fargo for the purpose of servicing mortgage loans," and that she had "acquired personal knowledge of the matters stated herein by examining those business records" relating to appellants' loan. Where, as here, appellants presented no evidence challenging Thomas' claims of personal knowledge, this was sufficient to satisfy Civ.R. 56(E)'s personal knowledge requirement.

{¶24} That Thomas is an employee of Wells Fargo, the servicing agent for the trust, rather than an employee of U.S. Bank, is of no consequence. This court and many others have upheld judgments in foreclosure actions based on testimony from mortgage servicers. *See, e.g., Najar* at ¶ 27; *Deutsche Bank Natl. Trust Co. v. Gardner*, 8th Dist. Cuyahoga No. 92916, 2010-Ohio-663, ¶ 10 (servicer of borrower's loan competent to testify regarding the content of documents in borrower's loan file with which he was personally familiar); *see also New York v. Dobbs*, 5th Dist. Knox No. 2009-CA-000002, 2009-Ohio-4742, ¶ 40 ("even though * * * not employed by" appellee, affidavit of loan servicing agent was sufficient to authenticate documents).

{¶25} Thomas' affidavit likewise provided a sufficient foundation for the admissibility of the relevant loan documents as business records under the business

records exception to the hearsay rule in Evid.R. 803(6). "'[A] witness providing the foundation [for a recorded business activity] need not have firsthand knowledge of the transaction.'" *U.S. Bank N.A. v. Wilkens*, 8th Dist. Cuyahoga No. 96617, 2012-Ohio-1038, ¶ 46, quoting *Moore v. Vandemark Co., Inc.*, 12th Dist. Clermont No. CA2003-07-063, 2004-Ohio-4313, ¶ 18.

{¶26} Further, appellants did not challenge Thomas' affidavit below. Failure of a party to move to strike or otherwise object to an affidavit or other documentary evidence submitted by an opposing party in support of, or in opposition to, a motion for summary judgment waives any error in considering that evidence under Civ.R. 56(C). *See, e.g., Home Bank, F.S.B. v. Papadelis*, 8th Dist. Cuyahoga Nos. 87527, 87528, 87529 and 87530, 2006-Ohio-5453, ¶ 31, citing *Stegawski v. Cleveland Anesthesia Group, Inc.*, 37 Ohio App.3d 78, 83, 523 N.E.2d 902 (8th Dist.1987); *see also Chase Bank USA, NA v. Lopez*, 8th Dist. Cuyahoga No. 91480, 2008-Ohio-6000, ¶ 16 (defendant could not raise for the first time on appeal that affidavit attached to plaintiff's motion for summary judgment did not meet the requirements of Civ.R. 56(E)).

Standing to Bring Foreclosure Action and Entitlement to Foreclose on the Mortgage

{¶27} Appellants also contend that the trial court erred in granting summary judgment to U.S. Bank because genuine issues of material fact exist as to whether U.S. Bank had standing to bring the foreclosure action and was the "legal and proper 'holder' of the Note and Mortgage." Appellants argue that U.S. Bank failed to establish standing because the Thomas affidavit "did not sufficiently state how or when, and if ever properly

and legally, [it] obtained the Note and Mortgage." Appellants also complain that no evidence was presented that the rubber-stamped endorsement and allonge were ever "signed or otherwise agreed upon by the Appellants" and that "[t]he Affidavit did not aver that Appellee has physical possession of the Note or Mortgage." Once again, appellants' arguments are meritless.

{¶28} A party commencing litigation must have standing to sue in order to invoke the jurisdiction of the common pleas court. *Fed. Home Loan Mtge. Corp. v. Schwartzwald*, 134 Ohio St.3d 13, 2012-Ohio-5017, 979 N.E.2d 1214, ¶ 38. To have standing, a plaintiff must have "a personal stake in the outcome of the controversy and have suffered some concrete injury that is capable of resolution by the court." *Bank of Am., N.A. v. Adams*, 8th Dist. Cuyahoga No. 101056, 2015-Ohio-675, ¶ 7, citing *Tate v. Garfield Hts.*, 8th Dist. Cuyahoga No. 99099, 2013-Ohio-2204, ¶ 12, and *Middletown v. Ferguson*, 25 Ohio St.3d 71, 75, 495 N.E.2d 380 (1986). Because it is required to invoke the jurisdiction of the common pleas court, standing to sue "'is to be determined as of the commencement of suit,'" *Schwartzwald* at ¶ 24, quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 570-571, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992), fn. 5, and "'depends on the state of things at the time of the action brought,'" *Schwartzwald* at ¶ 25, quoting *Mollan v. Torrance*, 22 U.S. 537, 539, 6 L.Ed. 154 (1824). If a plaintiff lacks standing at the time the foreclosure complaint is filed, the case must be dismissed; it cannot be cured through an assignment or other transfer prior to judgment. *Schwartzwald* at ¶ 39-40.

{¶29} In this case, U.S. Bank presented evidence that, as of the time it filed its complaint, it was both entitled to enforce the note and was the current assignee of the mortgage. This was sufficient to establish standing on its foreclosure claim. *See Deutsche Bank Natl. Trust Co. v. Holden*, 147 Ohio St.3d 85, 2016-Ohio-4603, 60 N.E.3d 1243, ¶ 2-3, 30-33, 35.

{¶30} The "holder" of a note is a "person entitled to enforce [it]." R.C. 1303.31(A)(1). Under R.C. 1301.201(B)(21)(a), a holder includes "[t]he person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession." The Thomas affidavit expressly states that at the time of the filing of the complaint (and through the date of the affidavit), U.S. Bank had possession of the note along with the allonge endorsed in blank. Although the allonge is undated and Thomas' affidavit does not state when possession of the note was transferred to U.S. Bank, the fact that a copy of the note endorsed in blank (along with the allonge) is attached to the complaint is evidence of the fact that the note was transferred to U.S. Bank prior to that time and that U.S. Bank was in possession of the note endorsed in blank before it filed its foreclosure action. *See, e.g., Nationstar Mtge., L.LC. v. Wagener*, 8th Dist. Cuyahoga No. 101280, 2015-Ohio-1289, ¶ 36. Contrary to appellants' argument, they were not required to "sign" the endorsement and allonge or "otherwise agree" to the negotiation and transfer of the note in order for it to be effective.[3]

[3] Appellants also complain that no evidence was presented that the rubber-stamped endorsement or allonge was "ever attached or affixed [to the note]." However, the copy of the note filed with the complaint plainly includes the

{¶31} U.S. Bank also produced a chain of recorded assignments that demonstrated that it was the current assignee of the mortgage. Accordingly, the record supports the trial court's conclusion that U.S. Bank had standing to bring the foreclosure action.

Evidence of Default and Amount Due

{¶32} Appellants argue that there were genuine issues of material fact precluding summary judgment "as to whether the account was truly in default" and regarding "the alleged amount due" because U.S. Bank failed to submit a complete "competent, credible 'payment history'" showing "payments made, payments delinquent or otherwise." Once again, we disagree.

{¶33} There is no requirement that a plaintiff provide a complete "payment history" in order to establish its entitlement to summary judgment in a foreclosure action. *Najar*, 2013-Ohio-1657, at ¶ 40; *see also Cent. Mtge. Co. v. Elia*, 9th Dist. Summit No. 25505, 2011-Ohio-3188, ¶ 7 ("'An affidavit stating [a] loan is in default, is sufficient for purposes of Civ.R. 56, in the absence of evidence controverting those averments.'"), quoting *Swartz*, 2004-Ohio-1986, at ¶ 14.

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rubber-stamped endorsement from American Midwest Mortgage to Washington Mutual on the note itself, just below appellants' signatures. The allonge endorsed by Washington Mutual in blank, specifically referencing the date, mortgagors, mortgagee and amount of the note and the address of the mortgaged property securing payment of the note, is also attached to the copy of the note filed with the complaint. Further, the Thomas affidavit expressly states that "[t]he Promissory Note includes an Allonge indorsed in blank."

{¶34} U.S. Bank presented evidence establishing that the loan was in default and had not been cured, the amount owed on the loan and that the conditions precedent to foreclosure, as set forth [in the note] and mortgage, had been satisfied. Thomas attested, based on her personal review of the records relating to appellants' account, that appellants had failed to make payments "as required under the terms of the Promissory Note and Mortgage," that the last payment had been received on February 26, 2012 (for the payment due February 1, 2012), that prior to the filing of the complaint, appellants had been sent a notice of default and that the default had not been cured. She further attested that the amount due under the note had been accelerated and that a principal balance of $151,942.96 plus interest at the rate of 5.625% per annum from February 1, 2012, was due on the note. Thomas' affidavit and supporting documents were sufficient to meet U.S. Bank's burden of establishing the amount due on the note. *See, e.g.*, *Najar*, 2013-Ohio-1657, at ¶ 40; *Cent. Mtge. Co. v. Elia*, 9th Dist. Summit No. 25505, 2011-Ohio-3188, ¶ 7 ("'An affidavit stating [a] loan is in default, is sufficient for purposes of Civ.R. 56, in the absence of evidence controverting those averments.'"), quoting *Swartz*, 2004-Ohio-1986, at ¶14.

{¶35} The record reflects that U.S. Bank met its burden under Civ.R. 56. Once U.S. Bank met its burden, appellants were obligated to present evidence of specific facts demonstrating a genuine issue of material fact for trial. Appellants did not oppose U.S. Bank's motion for summary judgment and, therefore, did not present any evidence to show that a genuine issue of material fact existed regarding any of the elements of its

foreclosure claim. The trial court properly found that U.S. Bank had standing and there was no plain error in its entry of summary judgment in its favor.

{¶36} Appellants' assignments of error are overruled.

{¶37} Judgment affirmed.

It is ordered that appellee recover from appellants the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to Cuyahoga County Court of Common Pleas 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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EILEEN A. GALLAGHER, PRESIDING JUDGE

MELODY J. STEWART, J., and
LARRY A. JONES, SR., J., CONCUR