

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE,
SUCCESSOR IN INTEREST TO BANK OF AMERICA, NATIONAL
ASSOCIATION, AS TRUSTEE, SUCCESSOR BY MERGER TO
LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR
BEAR STEARNS ASSET BACKED SECURITIES I TRUST 2004-
HE5, ASSET BACKED CERTIFICATES, SERIES 2004-HE5,

Plaintiff-Appellee,

v.

RONALD J. SMITH, et al.,

Defendants-Appellants.

OPINION AND JUDGMENT ENTRY
Case No. 20 MA 0061

Appellants' Motion to Certify Conflict

BEFORE:

Cheryl L. Waite, Gene Donofrio, Carol Ann Robb, Judges.

JUDGMENT:

Denied.

Atty. David A. Wallace and Atty. Karen M. Cadieux, Carpenter Lipps & Leland LLP, 280 Plaza, Suite 1300, 280 North High Street, Columbus, Ohio 43215, for Plaintiff-Appellee

Ronald J. Smith, Nancy L. Smith, Pro se, 4525 North 66th Street, Unit 53, Scottsdale, Arizona 85251, for Defendants-Appellants.

Dated: June 14, 2022.

PER CURIAM.

{¶1} On September 29, 2021, we released our Opinion in *U.S. Bank Natl. Assn. v. Smith*, 7th Dist. Mahoning No. 20 MA 0061, 2021-Ohio-3592. Appellants Ronald J. and Nancy Smith then filed an application to reconsider our decision, which we denied in *U.S. Bank Natl. Assn. v. Smith*, 7th Dist. Mahoning No. 20 MA 00612022-Ohio-1450. Appellants have now filed a motion to certify a conflict. The motion is denied as untimely.

{¶2} Motions to certify a conflict are governed by Article IV, Section 3(B)(4) of the Ohio Constitution. It provides:

Whenever the judges of a court of appeals find that a judgment upon which they have agreed is in conflict with a judgment pronounced upon the same question by any other court of appeals of the state, the judges shall certify the record of the case to the Supreme Court for review and final determination.

{¶3} Under Ohio law, “there must be an actual conflict between appellate judicial districts on a rule of law before certification of a case to the Supreme Court for review and final determination is proper.” *Whitelock v. Gilbane Bldg. Co.*, 66 Ohio St.3d 594, 613

N.E.2d 1032 (1993), paragraph one of the syllabus. We have adopted the following requirements from the Supreme Court:

[A]t least three conditions must be met before and during the certification of a case to this court pursuant to Section 3(B)(4), Article IV of the Ohio Constitution. First, the certifying court must find that its judgment is in conflict with the judgment of a court of appeals of another district and the asserted conflict must be “upon the same question.” Second, the alleged conflict must be on a rule of law—not facts. Third, the journal entry or opinion of the certifying court must clearly set forth that rule of law which the certifying court contends is in conflict with the judgment on the same question by other district courts of appeals. (Emphasis deleted.).

Id. at 596.

{¶4} Pursuant to App.R. 25(A), “no later than ten days after the clerk has both mailed to the parties the judgment or order of the court that creates a conflict with a judgment or order of another court of appeals and made note on the docket of the mailing, as required by App. R. 30(A),” the motion must be filed.

{¶5} The online docket notes that the clerk mailed the Opinion to the parties on October 5, 2021. Thus, the deadline for a timely motion would have been October 15, 2021. Appellants did not file their motion until April 8, 2022, almost six months pass the deadline. As such, Appellants’ motion is denied as untimely.

JUDGE CHERYL L. WAITE

JUDGE GENE DONOFRIO

JUDGE CAROL ANN ROBB

NOTICE TO COUNSEL

This document constitutes a final judgment entry.