[Cite as *Deutsche Bank Natl. Trust Co. v. Russo*, 2026-Ohio-4487.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

DEUTSCHE BANK NATIONAL TRUST COMPANY, :

Plaintiff-Appellee, :

No. 116229

v. :

JOSEPH F. RUSSO, ET AL., :

Defendants-Appellants. :

JOURNAL ENTRY AND OPINION

JUDGMENT: REVERSED AND REMANDED
RELEASED AND JOURNALIZED: November 12, 2026

Civil Appeal from the Cuyahoga County Court of Common Pleas
Case No. CV-18-893739

Appearances:

Reisenfeld & Associates LLC and William Purtell, *for appellee*.

DannLaw, Marc E. Dann, Andrew M. Engel, and Whitney E. Kaster, *for appellant*.

EILEEN T. GALLAGHER, J.:

{¶ 1} Defendant-appellant Joseph F. Russo ("Russo") appeals an order granting summary judgment in favor of plaintiff-appellee Deutsche Bank National Trust Company ("Deutsche Bank"). He claims the following error:

The trial court erred in granting Appellee's motion for summary judgment.

{¶ 2} We find that Russo specifically denied the authenticity of his signature on the note and that he had the right to contest the assignment of the note to Deutsche Bank. We, therefore, find that the trial court erred in granting summary judgment in favor of Deutsche Bank and reverse the trial court's judgment.

I. Facts and Procedural History

{¶ 3} In September 2005, Russo executed an adjustable rate note with New Century Mortgage Corporation ("New Century"), and the note was secured by a mortgage on property located on Skyline Drive, Olmsted Township, Ohio ("the Property"). Shortly thereafter, in July 2006, Bank One, N.A. ("Bank One"), a junior mortgage holder, filed a complaint in foreclosure against Russo on a second mortgage. Deutsche Bank filed a cross-claim against Russo, seeking to foreclose on its first mortgage. Deutsche Bank attached a copy of the note signed by Russo to its cross-claim.

{¶ 4} Meanwhile, also in 2006, Deutsche Bank filed a complaint in a separate foreclosure action against Russo on a loan secured by the property. Deutsche Bank attached a copy of the note signed by Russo to the complaint. The note presented in both the Bank One action and the Deutsche Bank action filed in 2006 included the identical signature page that contained Russo's signature. And, although Russo executed the note with New Century and Deutsche Bank was prosecuting foreclosure actions based on that note, the signature page did not contain an

endorsement from New Century. Sometime later, however, Deutsche Bank voluntarily dismissed both its cross-claim and its separately filed foreclosure complaint.

{¶ 5} Years later, in February 2018, Deutsche Bank commenced the instant action by filing an in rem complaint in foreclosure against Russo. As before, it attached a copy of the adjustable-rate note signed by Russo to the complaint as Exhibit A. This time, however, the signature page of the note contained an endorsement by New Century, the original lender, that was not present in the copies of the note attached to the pleadings in the previously filed foreclosure actions.

{¶ 6} Russo filed an answer stating, among other things, that "Russo admits that a document marked Exhibit A is attached to the Complaint" but "denies that said document is authentic[.]" (Answer ¶ 1.) Russo also asserted several affirmative defenses including that "Plaintiff's Complaint is barred due to Plaintiff's attaching a document marked Exhibit A that was not signed by Defendant Joseph F. Russo." (Answer ¶ 10.) He also asserted that "Plaintiff's Complaint is barred due to Plaintiff's failure to attach a proper assignment from New Century of the alleged Promissory Note." (Answer ¶ 11.)

{¶ 7} Deutsche Bank filed a motion for summary judgment, arguing it was entitled to enforce the note and mortgage executed by Russo in 2005. In support of the motion, Deutsche Bank filed an affidavit from the loan servicer stating that Deutsche Bank is the holder of the original note and mortgage and that the note

attached to the affidavit, which is identical to the note attached to the complaint, is a true and accurate copy of the note. (Response affidavit at ¶ 5.)

{¶ 8} Russo filed a brief in opposition to the motion for summary judgment, arguing there were genuine issues of material fact as to whether Deutsche Bank is the owner of the note and whether Deutsche Bank is the owner of the mortgage that secures the property. Russo conceded that he borrowed money from New Century and that he granted New Century a mortgage on the property, but he disputed, among other things, the allegation that the copy of the note marked as Exhibit A bears his true signature. He also argued that the endorsement on the signature page was invalid and that Deutsche Bank failed to show a complete chain of endorsements from New Century to it.

{¶ 9} Russo also filed a supplemental response to Deutsche Bank's motion for summary judgment. With the supplemental response, Russo provided certified copies of the prior two foreclosure filings to allow a comparison of the signature pages of the note. Russo again asserted that the signature page of the note attached to the complaint in this case is not his signature and that it looks different from his signature in the prior two filings. He also asserted that the font on the signature page looks different.

{¶ 10} The magistrate issued a decision granting summary judgment in favor of Deutsche Bank. The magistrate concluded that because Russo did not specifically deny the authenticity of his signature on the note attached to the complaint as

Exhibit A, the signature is deemed genuine. The magistrate's decision states, in relevant part:

> Paragraphs 1 through 6 of Defendant's Answer do not specifically deny that he signed the note, but rather offer general denials to the claims made in the Complaint. There is no explanation as to how Defendant's signature appeared on the Note and Mortgage. Paragraph 10 of Defendant's Answer, under the "Affirmative Defense" heading, states, "Plaintiff['s] Complaint is barred due to Plaintiff attaching a document marked as Exhibit A that was not signed by Defendant Joseph F. Russo." The plain language of this statement is that Defendant did not sign Exhibit A attached to Plaintiff's Complaint. This affirmative defense does not specifically deny that Defendant signed the underlying Note nor does it give any explanation as to "what actually occurred." . . . Therefore, the Magistrate must find that Defendant's signature on the Note is genuine.

{¶ 11} The magistrate also rejected Russo's challenge to the endorsement on the note and found that Russo lacked standing to challenge the transfers of the note.

{¶ 12} Russo filed timely objections to the magistrate's decision. The trial court overruled his objections with minimal comment and adopted the magistrate's decision. In adopting the magistrate's decision, the trial court found that Russo "did not make a specific denial regarding his signature and has waived any challenge regarding his signature on the note." Russo now appeals the trial court's judgment.

II. Law and Analysis

{¶ 13} In the sole assignment of error, Russo argues the trial court erred in granting Deutsche Bank's motion for summary judgment. He contends there are genuine issues of material fact regarding the authenticity of his signature on the note attached to the complaint as Exhibit A. He also argues that he has standing to challenge Deutsche Bank's right to enforce the note.

A. Standard of Review

{¶ 14} Appellate review of summary judgments is de novo. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105 (1996). Pursuant to Civ.R. 56(C), summary judgment is appropriate 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) reasonable minds can come to but one conclusion and that conclusion is adverse to the nonmoving party, the party being entitled to have the evidence construed most strongly in his or her favor. *Horton v. Harwick Chem. Corp.*, 73 Ohio St.3d 679 (1995), paragraph three of the syllabus.

{¶ 15} The party moving for summary judgment bears the burden of showing that there is no genuine issue of material fact and that he or she is entitled to judgment as a matter of law. *Dresher v. Burt*, 75 Ohio St.3d 280, 292-293 (1996). Once the moving party satisfies its burden, the nonmoving party "may not rest upon the mere allegations or denials of the party's pleadings, but the party's response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Civ.R. 56(E); *Mootispaw v. Eckstein*, 76 Ohio St.3d 383, 385 (1996).

B. Authenticity of Russo's Signature

{¶ 16} Russo argues that he specifically denied the authenticity of his signature on the note and that the trial court erred in finding that he waived any challenge to his signature.

{¶ 17} A holder of a note establishes a prima facie case for payment where the note is placed in evidence and the maker's signature is admitted. *Green Tree Servicing, L.L.C. v. Roberts*, 2013-Ohio-5362, ¶ 20 (12th Dist.), citing *Dryden v. Dryden*, 86 Ohio App.3d 707, 711 (4th Dist. 1993), citing R.C. 1303.36(B). "However, no person is liable on an instrument unless his or her signature appears thereon." *Id.*, citing *Dryden* at 711.

{¶ 18} R.C. 1303.36(A) governs proof of signatures on commercial paper and provides that "[u]nless specifically denied in the pleadings, in an action with respect to an instrument, the authenticity of, and authority to make, each signature on an instrument is admitted." Thus, all signatures on promissory notes are presumed valid unless the maker of the note "specifically denies the validity" of the signature. *Green Tree Servicing* at ¶ 21; *Dryden* at 711.

> A "specific denial" has been defined as "a statement that denies a particular fact and then states what actually occurred." [*Dryden*] at 712. An answer which denies "each and every allegation" of a plaintiff's complaint, without more, is not a specific denial of the genuineness of the defendant's signature and is, therefore, an admission for the purposes of R.C. 1303.36. *Id.*, citing *Bentz v. Mullins*, 24 Ohio App.2d 137 (1st Dist. 1970).

Green Tree Servicing at ¶ 21.

{¶ 19} In *Dryden*, the court held that due to the general admonition of R.C. 1301.06 that remedies are to be liberally construed, "a court should interpret the requirement of a specific denial to require only that the defendant deny the signature as specifically as possible." *Dryden* at 712. In determining whether a defendant has specifically denied his or her signature, the *Dryden* Court explained

that although the specific denial must be liberally construed, "an answer which denies 'each and every allegation' of a plaintiff's complaint, without more, is not a specific denial of the genuineness of the defendant's signature and is therefore an admission for the purpose of R.C. 1303.36."[1] Thus, there must be something more than a denial of "each and every allegation" to differentiate a specific denial from a general denial of the allegations. *Id.*

{¶ 20} In paragraph 1 of his answer, Russo specifically denied that the note attached to the complaint as Exhibit A was authentic. Although Russo did not use the words "specifically deny," his denial that the note attached to the complaint was authentic is more than a denial of each and every allegation. He specifically denied the authenticity of the document claiming to bear his signature. This was a specific denial.

{¶ 21} Russo also asserted in his answer that "Plaintiff's Complaint is barred due to Plaintiff's attaching a document marked Exhibit A that was not signed by Defendant Joseph F. Russo." (Answer ¶ 10.) Deutsche Bank argues this statement cannot qualify as a specific denial because it appears in a list of affirmative defenses. It cites *Durig v. Youngstown*, 2025-Ohio-4719, in support of its argument.

{¶ 22} In *Durig*, the Ohio Supreme Court explained that because an affirmative defense is an assertion of facts and arguments that, if true, will defeat the plaintiff's claim, it generally ""assumes establishment of a prima facie case.""

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[1] R.C. 1303.36 was renumbered as R.C. 1301.305 by 2011 H.B. 9, § 1, effective June 29, 2011.

Id. at ¶ 25, quoting *State ex rel. Bey v. Bur. of Sentence Computation*, 2022-Ohio-236, ¶ 18, quoting *Gallagher v. Cleveland Browns Football Co*., 1996-Ohio-320, ¶ 17, fn. 3.

{¶ 23} However, neither *Durig* nor the cases quoted therein involved a denial of a signature on a promissory note. That an affirmative defense generally assumes the establishment of a prima facie case does not mean that a plaintiff's claim has been conclusively established or that a defendant's statement appearing among a list of affirmative defenses cannot be viewed as a specific denial of the authenticity of a signature on promissory note.

{¶ 24} Furthermore, Ohio is a notice-pleading state. *Balfour v. Haymon*, 2021-Ohio-3499, ¶ 35 (10th Dist.). Pursuant to Civ.R. 8(F), "[a]ll pleadings shall be so construed as to do substantial justice." *Buckeye Hoya, L.L.C. v. Brown Gibbons Lang & Co. L.L.C.*, 2023-Ohio-2177, ¶ 35 (8th Dist.), citing *MacDonald v. Bernard*, 1 Ohio St.3d 85, 86, fn. 1, (1982) (pleadings shall also be construed liberally in order that the substantive merits of the action may be served).

{¶ 25} As previously stated, a specific denial must be liberally construed. *Dryden,* 86 Ohio App.3d at 712. And pleadings must be construed to do substantial justice. *Buckeye Hoya* at ¶ 35. When Russo's affirmative defense is construed with his earlier denial of the authenticity of the note attached to the complaint, it is clear that Russo specifically denied his signature for purposes of R.C. 1303.36.

{¶ 26} Deutsche Bank nevertheless asserts that the only evidence supporting Russo's denial of his signature was his own self-serving affidavit. Indeed, a party's

unsupported and self-serving statements in an affidavit, without corroborating evidence, are not sufficient to demonstrate any genuine issues of material fact. *Jochum v. Listati*, 2019-Ohio-166, ¶ 19 (8th Dist.).

{¶ 27} However, a layperson's comparison of the signature pages in the notes submitted in the prior foreclosure cases with the signature page in the note attached to the complaint in this case reveals not only a different signature but, curiously, it also bears a different font in the text of that page of the document. There is also an endorsement on the signature page in the note submitted in this case from the original lender, New Century, that was not present in the other two signature pages in the prior cases. These discrepancies corroborate Russo's statement that the note attached to the complaint in this case is not authentic and that the signature on the note attached to the complaint in this case is not his signature. At the very least, the differences between the previously submitted notes and the note attached to the complaint in this case was enough to create a genuine issue of material fact as to whether Deutsche Bank submitted an authentic copy of the note with a genuine signature. Therefore, the trial court erred in concluding that Russo did not specifically deny his signature and that he waived any challenge regarding his signature on the note.

C. Standing to Challenge Endorsements

{¶ 28} Russo further argues the trial court erred in concluding that he lacked standing to challenge the transfers of the note. The magistrate stated in his decision that "[t]here is ample case law that provides that the alleged signer of an instrument

lacks the standing to challenge subsequent assignments of the instrument." (Magistrate's decision p. 6.) The magistrate cited *JP Morgan Chase Bank v. Stevens*, 2017-Ohio-7165, ¶ 27 (8th Dist.), and *US Bank N.A. v. Alex*, 2015-Ohio-871, ¶ 20 (8th Dist.), in support of this conclusion. However, neither of these cases bars the maker of a note from challenging subsequent transfers of the note.

{¶ 29} In *Stevens*, we held that a mortgagor lacks standing to challenge a mortgage assignment if the mortgagor is neither party to, nor a third-party beneficiary of, the assignment of the mortgage. *Id.* at ¶ 40. Although we also held that the homeowner in that case lacked standing to challenge transfer of the note, the note was endorsed in blank. *Id.* at ¶ 39. A note endorsed in blank is bearer paper, which is enforceable by anyone in possession of it. *United States Bank Natl. Assn. v. Robinson*, 2020-Ohio-32, ¶ 15 (8th Dist.), quoting *Bank of Am. v. Rogers*, 2019-Ohio-1443, ¶ 15 (8th Dist.), quoting *Deutsche Bank Natl. Trust Co. v. Najar*, 2013-Ohio-1657, ¶ 62 (8th Dist.) (Ohio courts have held that "'by virtue of its possession of the note endorsed in blank,'" a bank "'was the holder of the note and entitled to enforce the note under Ohio law.'"). Therefore, because the plaintiff was the holder of a note endorsed in blank, there was no issue regarding any transfers of the note in *Stevens*.

{¶ 30} In *Alex*, we held that the homeowners could not challenge the bank's standing to enforce a note because they never answered the complaint or made an appearance in the case and they never appealed the judgment that granted the foreclosure against them. Instead, the homeowners filed a motion for relief from

judgment under Civ.R. 60(B) after the sale of the foreclosed property was confirmed, and we held that a motion for relief from judgment under Civ.R. 60(B) could not be used as a substitute for appeal. *Id.* at ¶ 13-18. Therefore, the cases cited by the magistrate are not applicable to the facts of this case and do not prevent Russo from challenging Deutsche Bank's claim that it is a valid holder of the note.

{¶ 31} A plaintiff "seeking to foreclose on [a] mortgage must prove that it [is] the person or entity entitled to enforce the note secured by the mortgage." *Deutsche Bank Natl. Trust Co. v. Holden*, 2016-Ohio-4603, ¶ 26. In a motion for summary judgment, the moving party bears the burden of production as to each and every element of its claim. *Dresher*, 75 Ohio St.3d at 292-293. Thus, in a foreclosure action, the bank seeking foreclosure must establish that it is the entity entitled to enforce the note secured by the mortgage. *Holden* at ¶ 26.

{¶ 32} Furthermore, a fundamental requirement of due process guarantees an opportunity to be heard. *In re R.M.*, 2024-Ohio-1885, ¶ 19 (8th Dist.).

> Due process of law implies, in its most comprehensive sense, the right of the person affected thereby to be present . . . to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved.

Williams v. Dollison, 62 Ohio St.2d 297, 299 (1980). Thus, due process guarantees that a defendant has the right to present a defense to each and every point on which his opponent bears the burden of proof. *Id.*

{¶ 33} Thus, courts have held that a debtor in a foreclosure case may challenge a bank's attempt to foreclose on a note secured by a mortgage. For

example, we recently reversed an order granting summary judgment in favor of a bank in a foreclosure action because the bank failed to establish its entitlement to enforce the note. *1900 Capital Trust II v. House-Redd*, 2025-Ohio-3274, ¶ 33 (8th Dist.).

{¶ 34} Similarly, in *Bank of Am., N.A. v. Pasqualone*, 2013-Ohio-5795, ¶ 35 (10th Dist.), the court held that "in cases where R.C. Chapter 1303 applies, a debtor may challenge the assignment of a note (by negotiation or transfer) if such challenge fits the criteria of a denial, defense or claim in recoupment as outlined in R.C. 1303.36 or 1303.35." *See also U.S. Bank N.A. v. Bobo*, 2014-Ohio-4975, ¶ 22 (4th Dist.) (Where R.C. Ch. 1303 applies, a debtor may challenge the assignment of a note if such a challenge fits the criteria of a denial, defense, or claim in recoupment as outlined in R.C. 1303.36 or 1303.35.).

{¶ 35} Due process guarantees that Russo may defend himself against the bank's claims. And, his defense ensures that if a judgment is ultimately rendered against him, he will be ordered to pay the proper party. Therefore, the trial court erred in finding that Russo lacked standing to challenge the transfers of the note.

{¶ 36} The sole assignment of error is sustained.

{¶ 37} The trial court's judgment is reversed, and the case is remanded to the trial court for further proceedings.

It is ordered that appellant recover from appellee 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.

EILEEN T. GALLAGHER, JUDGE

MICHELLE J. SHEEHAN, A.J., and
TIMOTHY W. CLARY, J., CONCUR