

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
ERIE COUNTY

Bank of America N.A.

Court of Appeals No. E-11-054

Appellant

Trial Court No. 2009 CV 0792

v.

Birdia L. Edmon, et al.

DECISION AND JUDGMENT

Appellee

Decided: July 27, 2012

* * * * *

Kip T. Bollin and James L. DeFeo, for appellant.

Daniel L. McGookey, Kathryn M. Eyster, and Lauren
McGookey, for appellee.

* * * * *

YARBROUGH, J.

Summary

{¶1} Appellant, Bank of America, N.A. as successor by merger to LaSalle Bank National Association, as trustee (“Bank of America”), appeals from a judgment of the

Court of Common Pleas of Erie County in which the trial court dismissed its complaint in foreclosure. For the reasons that follow, we reverse.

Facts and Procedural Background

{¶2} On September 18, 2009, Bank of America filed a complaint in foreclosure against appellee, Birdia Edmon, along with various other defendants with an interest in a property located in Sandusky, Ohio. The complaint alleged that Bank of America was the holder of the note executed in favor of SouthStar Funding, LLC (“SouthStar”), that appellee defaulted on the note and the mortgage securing the note, and that appellee owed to Bank of America \$103,748.12, together with interest at the rate of 5.87 percent per year. Bank of America further alleged that all conditions precedent had been satisfied and attached copies of the note, the mortgage, and the mortgage assignment to the complaint. Bank of America prayed that the court find appellee in default on the note, recognize the mortgage as the first lien on the property, and order the property sold. The note attached to the complaint, signed by appellee on June 23, 2006, included an allonge which was indorsed in blank by Lynn B. Leonard, Assistant Vice President of SouthStar. The attached copy of the mortgage was also signed by appellee in favor of SouthStar. The mortgage assignment, recorded on June 9, 2009, indicates that Bank of America is the current assignee.

{¶3} On November 25, 2009, appellee filed an answer and counterclaim. In her answer, appellee generally denied the allegations set forth in Bank of America’s

complaint. Additionally, appellee stated the following affirmative defense, “10. Plaintiff filed this action with full knowledge that it is not the real owner and holder of Defendant’s mortgage loan obligation. Plaintiff’s said conduct then constitutes ‘frivolous conduct’, subjecting it to appropriate sanctions, including costs and attorney’s fees.”

{¶4} In her counterclaim, appellee alleged that Bank of America violated the Fair Debt Collections Practices Act, the Truth in Lending Act, and the Home Ownership and Equity Protection Act and committed “civil conspiracy” against appellee. As a result of these alleged violations, appellee sought a declaratory judgment, injunctive relief, punitive damages, compensatory damages, interest, costs, and attorney fees.

{¶5} Bank of America replied to appellee’s counterclaim on February 3, 2010. On December 23, 2010, appellee filed a motion to dismiss in which it argued that Bank of America must “allege and prove not only that it is the holder of the promissory note, but also the owner thereof.” In support of this argument, appellee cited to an unreported Florida trial court decision, *BAC Home Loan Servicing v. Stentz*, Fla. 6th Cir. Civ. Div. J4 No. 51-2009-CA-7656-ES (Dec. 1, 2010). Bank of America opposed this motion. Nevertheless, the trial court, in a decision journalized on March 9, 2011, dismissed Bank of America’s claim without prejudice “based on [Bank of America’s] failure to allege in its complaint that it is the owner and holder of the subject note.” (Emphasis sic.)

{¶6} On March 21, 2011, Bank of America filed a motion for judgment on the pleadings on appellee’s counterclaim. Following a response by appellee, the trial court

dismissed appellee's counterclaim with prejudice in a decision journalized on June 10, 2011.

{¶7} This appeal followed.

Assignment of Error

{¶8} Bank of America asserts the following assignment of error:

A. The trial court erred when it dismissed Bank of America's complaint by holding that Bank of America must allege that it was both the holder and the owner of the Note to have standing to enforce the Note and foreclose on the mortgage securing repayment of the note.

Analysis

{¶9} This is not the first time we have addressed this issue. With facts virtually identical to the instant case, in *U.S. Bank, N.A. v. Coffey*, 6th Dist. No. E-11-026, 2012-Ohio-721, ¶ 20, we determined that *ownership* is not a requirement for enforcement of a note. *See* R.C. 1303.31(B). Rather, in foreclosure actions, the real party in interest is the person entitled to enforce the note and mortgage. *Coffey* at ¶ 13, citing *Wachovia Bank of Delaware v. Jackson*, 5th Dist. No. 2010-CA-00291, 2011-Ohio-3202, ¶ 17. Thus, we concluded that pleading inter alia that it was the *holder* of the note, U.S. Bank satisfied the pleading requirements of Civ.R. 8(A). *Coffey* at ¶ 21.

{¶10} Similarly, in this case, Bank of America asserted in its complaint that (1) it is the holder of the note attached to the complaint, (2) Edmon is in default under the

terms of the note and currently owes \$103,748.12, together with interest at the rate of 5.87 percent, (3) the note is secured by the mortgage also attached to the complaint, and (4) Bank of America is entitled to have the mortgage foreclosed.

{¶11} We adopt the reasoning extensively set forth in *Coffey*, and find that the trial court erred by dismissing Bank of America's claim pursuant to Civ.R. 12(B)(6).

{¶12} Accordingly, Bank of America's assignment of error is well-taken.

Conclusion

{¶13} The judgment of the Erie County Court of Common Pleas dismissing Bank of America's claim without prejudice is reversed and the case is remanded for further proceedings. Appellee is ordered to pay the costs of this appeal pursuant to Civ.R. 24.

Judgment Reversed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See also 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.