

COURT OF APPEALS  
DELAWARE COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

BAC HOME LOANS SERVICING, L.P. fka COUNTRYWIDE HOME LOANS SERVICING, L.P.	:	JUDGES:
	:	Julie A. Edwards, P.J.
	:	W. Scott Gwin, J.
	:	Patricia A. Delaney, J.
	:	
Plaintiff-Appellee	:	Case No. 10CAE070050
	:	
-vs-	:	
	:	<u>OPINION</u>

JEFFREY E. LOETHEN  
Defendant-Appellant

CHARACTER OF PROCEEDING: Civil Appeal from Delaware County  
Court of Common Pleas Case No.  
09CVE121837

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: March 22, 2011

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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*Edwards, P.J.*

{¶1} Appellant, Jeffrey E. Loethen, appeals a summary judgment of the Delaware County Common Pleas Court on a complaint for foreclosure filed by appellee BAC Home Loans Servicing, LP fka Countrywide Home Loans Servicing, LP.

#### STATEMENT OF FACTS AND CASE

{¶2} Appellee filed the instant foreclosure action against appellant on December 31, 2009, alleging that appellant was in default under a promissory note for the purchase of real property at 8951 Stonebridge Place, Powell, Ohio, and demanding enforcement of the mortgage. On January 19, 2010, appellee filed a Statement of Acceptability of the Legal Description for Transfer Purposes, as required by Delaware County Common Pleas Court Local Rule 38.02.

{¶3} Appellant filed a pro se answer on January 25, 2010. In his answer, appellant set forth the defense that Local Rule 38.02 requires the Statement of Acceptability to be filed simultaneously with the complaint.

{¶4} Appellee filed a motion for summary judgment. Appellant moved to dismiss the complaint for noncompliance with Local Rule 38.02. The motions were scheduled jointly for non-oral hearing by the trial court on June 2, 2010. The court granted appellee's motion for summary judgment and denied appellant's motion to dismiss on June 3, 2010. On June 23, 2010, the court issued a judgment on the complaint and decree in foreclosure. Appellant assigns a single error on appeal:

{¶5} "THE TRIAL COURT ERRED IN GRANTING THE PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT WITHOUT ADDRESSING THE FAILURE OF THE PLAINTIFF TO COMPLY WITH RULE 38.02 – STATEMENT OF ACCEPTABILITY OF

THE DELAWARE COUNTY LOCAL RULES OF PRACTICE OF THE COURT OF COMMON PLEAS.”

{¶6} Local Rule 38.02 provides in pertinent part:

{¶7} “[T]he attorney for the plaintiff shall secure from the Delaware County Engineer, and file simultaneously with the complaint, a statement reflecting the acceptability, or lack thereof, of the description of the subject real estate, for transfer purposes.”

{¶8} It is undisputed in the instant case that the statement of acceptability was not filed simultaneously with the complaint, but was filed nineteen days thereafter.

{¶9} Ohio courts are permitted to enact local rules as long as such rules are not inconsistent with any rules governing practice and procedure promulgated by the Ohio Supreme Court. *State ex rel. Henneke v. Davis* (1986), 25 Ohio St.3d 23, 494 N.E.2d 1133.

{¶10} It is well-settled in Ohio law that the enforcement of local rules is a matter within the discretion of the court promulgating the rules. *E.G. Dvorak v. Petronzio*, 11<sup>th</sup> Dist. No. 2007-G-2752, 2007-Ohio-4957, ¶30; *In re D.H.*, 8<sup>th</sup> Dist. No. 89219, 2007-Ohio-4069, ¶25.

{¶11} Appellant has not demonstrated that the court abused its discretion in overruling his motion to dismiss for appellant’s failure to file the Statement of Acceptability simultaneously with the complaint. The statement was filed January 19, 2010, a mere nineteen days after the complaint was filed, and before appellant filed an answer to the complaint. Appellant was not prejudiced in any way by the late filing of the statement of acceptability.

{¶12} The assignment of error is overruled.

{¶13} The judgment of the Delaware County Common Pleas Court is affirmed.

By: Edwards, P.J.

Gwin, J. and

Delaney, J. concur

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JUDGES

JAE/r1130

