[Cite as *Wells Fargo Bank v. Watson*, 2015-Ohio-2599.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

ASHTABULA COUNTY, OHIO

WELLS FARGO BANK, N.A.,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2014-A-0062**
- vs -	:	
JEFFERY S. WATSON, et al.,	:	
Defendant-Appellant.	:	

Civil Appeal from the Ashtabula County Court of Common Pleas, Case No. 2011 CV 00785.

Judgment: Affirmed.

Scott A. King, Thompson Hine, LLP, Austin Landing 1, 10050 Innovation Drive, Suite 400, Dayton, OH 45342 and *Robert A. West, Jr.,* Thompson Hine, LLP, 3900 Key Center, 127 Public Square, Cleveland, OH 44114 (For Plaintiff-Appellee).

Marc E. Dann, Grace M. Doberdruk, and *Daniel M. Solar,* Dann, Doberdruk & Harshman, LLC, 4600 Prospect Avenue, P.O. Box 6031040, Cleveland, OH 44103 (For Defendant-Appellant).

CYNTHIA WESTCOTT RICE, J.

{¶1} Appellant, Jeffrey S. Watson, appeals the summary judgment entered by the Ashtabula County Court of Common Pleas in favor of appellee, Wells Fargo Bank, N.A., on Wells Fargo's complaint for foreclosure. We are asked to consider whether any genuine issue of material fact existed, precluding summary judgment in favor of Wells Fargo. For the reasons that follow, we affirm.

{¶2} On October 10, 2003, appellant obtained a mortgage loan from Lakeland Financial Services, Inc. to purchase real estate for investment purposes. In exchange for the loan, appellant signed a promissory note in favor of Lakeland in the amount of $104,000. Attached to the note was an "Endorsement Allonge to Note," also dated October 10, 2003, on which Lakeland endorsed the note to Ohio Savings Bank. Ohio Savings Bank later endorsed the note in blank.

{¶3} Also on October 10, 2003, in order to secure the note, appellant signed a mortgage in favor of Mortgage Electronic Registration Systems, Inc. ("MERS"), acting as nominee for the lender, Lakeland.

{¶4} On May 31, 2005, Wells Fargo became the holder of the note and servicing agent for this mortgage loan. At that time the note was not in default.

{¶5} Four years later, on May 31, 2009, Federal National Mortgage Association ("Fannie Mae") acquired ownership of this loan, and Wells Fargo became Fannie Mae's servicing agent for the loan.

{¶6} On July 20, 2011, MERS, as nominee for Lakeland, assigned the mortgage to Wells Fargo by written assignment.

{¶7} Appellant defaulted on the mortgage loan by failing to make the payment due for April 1, 2011, or any subsequent installments. The principal amount due under the loan as of that date was $93,356, plus interest and advances. There is no dispute as to appellant's default or the balance due.

{¶8} Following appellant's default, Wells Fargo sent him a letter notifying him that his loan was in default and that unless he brought his account current, Wells Fargo would accelerate the full amount owed and foreclose the mortgage. Appellant did not

make the payment necessary to bring his account current, and Wells Fargo accelerated the entire balance owed.

{¶9} On September 2, 2011, Wells Fargo filed its complaint in foreclosure. Wells Fargo alleged that it was the holder of the note; that the note was secured by a mortgage, which had been assigned to Wells Fargo; that appellant was in default; and that Wells Fargo had declared the debt to be due. Attached to the complaint were copies of the note, the mortgage, and the assignment of mortgage from MERS to Wells Fargo. Wells Fargo prayed for judgment against appellant for the balance owed on the note in the amount of $93,356, plus interest and advances, and that the mortgage be foreclosed.

{¶10} Appellant filed an answer, denying the material allegations of the complaint and asserting certain affirmative defenses and a counterclaim.

{¶11} While the parties were exchanging discovery, appellant took the deposition of Susan Rowles, a vice-president of Wells Fargo assigned to the litigation department. At Ms. Rowles' deposition, Wells Fargo's counsel provided the original note to appellant and his counsel for their inspection.

{¶12} Ms. Rowles testified that on May 31, 2009, Fannie Mae acquired ownership of this mortgage loan. At that time Wells Fargo was the holder of the note and became the servicing agent for the loan on behalf of Fannie Mae.

{¶13} Ms. Rowles testified she compared the copy of the note attached to the complaint to the original note, and said the copy attached to the complaint is an accurate copy of the original.

{¶14} Subsequently, Wells Fargo moved for summary judgment on its complaint and on appellant's counterclaim. In support, it attached the affidavit of Amanda

Weatherly, a vice-president of Wells Fargo assigned to loan documentation. Ms. Weatherly testified by affidavit that, based on her review of Wells Fargo's business records for this account, on October 10, 2003, appellant signed the note and, in the allonge attached to the note, also dated October 10, 2003, Lakeland endorsed the note to Ohio Savings Bank. Ohio Savings Bank initially endorsed the note in blank and, later, Wells Fargo converted the endorsement in blank to a special endorsement. Ms. Weatherly said that Wells Fargo currently has possession of the original note and that it has had possession of it since May 31, 2005, more than six years before the complaint was filed. She said the note attached to her affidavit is an accurate copy of the original note.

{¶15} Ms. Weatherly said that on October 10, 2003, appellant also signed the mortgage. She said that on July 27, 2011, more than one month before the complaint was filed, MERS, as nominee for Lakeland, assigned the mortgage to Wells Fargo.

{¶16} Ms. Weatherly said that appellant failed to make the payments due under the note and mortgage to Wells Fargo when they became due, and that Wells Fargo sent appellant a default letter on May 8, 2011, notifying him that his loan was in default and that unless his payments were brought current by June 7, 2011, Wells Fargo would accelerate the note and foreclose on the mortgage.

{¶17} Ms. Weatherly said that the account is due for the April 1, 2011 payment; that appellant has not made any subsequent payments or cured his default; and that Wells Fargo accelerated the account, making the balance due in the amount of $93,356, plus interest and advances.

{¶18} Appellant filed a brief in opposition to summary judgment. The trial court entered judgment granting Wells Fargo's motion for summary judgment on its complaint

and on appellant's counterclaim. Thereafter, the court entered its foreclosure decree. Appellant appeals the trial court's judgment, asserting two assignments of error. For the first, he alleges:

{¶19} "The trial court erred when it granted a judgment of foreclosure to appellee Wells Fargo when nonparty Fannie Mae owned the note and mortgage and material issues of fact remained for the trial court regarding the validity of the note endorsements and assignment, and the affidavit of Amanda Weatherly was not made upon personal knowledge."

{¶20} Summary judgment is proper 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, that party being entitled to have the evidence construed most strongly in his favor. Civ.R. 56(C); *Leibreich v. A.J. Refrigeration, Inc*., 67 Ohio St.3d 266, 268 (1993).

{¶21} The party seeking summary judgment on the ground that the nonmoving party cannot prove his case bears the initial burden of informing the trial court of the basis for the motion and of identifying those portions of the record that demonstrate the absence of a genuine issue of material fact on the essential elements of the nonmoving party's case. *Dresher v. Burt*, 75 Ohio St.3d 280, 292 (1996). The moving party must point to some evidence of the type listed in Civ.R. 56(C) that affirmatively demonstrates the nonmoving party has no evidence to support his case. *Dresher, supra*, at 293.

{¶22} If this initial burden is not met, the motion for summary judgment must be denied. *Id.* However, if the moving party meets his initial burden, the nonmoving party must then produce competent evidence showing there is a genuine issue for trial. Civ.R.

56(E). If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against him. *Dresher, supra.*

{¶23} Since a trial court's ruling on a motion for summary judgment involves only questions of law, we conduct a de novo review of the judgment. *DiSanto v. Safeco Ins. of Am.*, 168 Ohio App.3d 649, 2006-Ohio-4940, ¶41 (11th Dist.).

{¶24} In a mortgage foreclosure action, the mortgage lender must establish an interest in the promissory note or in the mortgage in order to have standing to invoke the jurisdiction of the common pleas court. *Fed. Home Loan Mortg. Corp. v. Schwartzwald*, 134 Ohio St.3d 13, 2012-Ohio-5017, ¶28. "The requirement of an 'interest' can be met by showing an assignment of *either the note or mortgage*." (Emphasis added.) *Fed. Home Loan Mtge. Corp. v. Koch*, 11th Dist. Geauga No. 2012-G-3084, 2013-Ohio-4423, ¶24. Further, because standing is required to invoke the trial court's jurisdiction, standing is determined as of the filing of the complaint. *Schwartzwald, supra,* at ¶24.

{¶25} Whether standing exists is a matter of law that we review de novo. *Bank of Am., NA v. Barber*, 11th Dist. Lake No. 2013-L-014, 2013-Ohio-4103, ¶19.

{¶26} Appellant does not appeal the trial court's judgment in favor of Wells Fargo on his counterclaim. Instead, his appeal is limited to the court's grant of summary judgment in favor of Wells Fargo on its complaint. Appellant asserts that genuine issues of material fact remain so that Wells Fargo is not entitled to summary judgment. We are asked to address the following four issues: (1) whether ownership of the note and mortgage by a nonparty, Fannie Mae, defeated Wells Fargo's right to foreclosure; (2) whether genuine issues remain regarding the validity of the note endorsements on the allonge; (3) whether genuine issues remain concerning the validity of the mortgage

assignment; and (4) whether the affidavit of Amanda Weatherly, Wells Fargo's vice-president, was made upon her personal knowledge.

{¶27} Before addressing appellant's issues, we note that Wells Fargo established it had standing to file this action.

{¶28} "'Ohio's version of the Uniform Commercial Code governs who may enforce a note. R.C. 1301.01 et seq. Article 3 of the UCC governs the creation, transfer and enforceability of negotiable instruments, including promissory notes secured by mortgages on real estate.'" *JP Morgan Chase Bank, N.A. v. Fallon*, 4th Dist. Pickaway No. 13CA3, 2014-Ohio-525, ¶11, quoting *HSBC Mtge. Servs., Inc. v. Edmon*, 6th Dist. Erie No. E-11-046, 2012-Ohio-4990, ¶26.

{¶29} "R.C. 1301.01 was repealed by Am.H.B. No. 9, 2011 Ohio Laws File 9, effective June 29, 2011. That act amended the provisions of R.C. 1301.01 and renumbered that section so that it now appears at R.C. 1301.201. * * * R.C. 1301.201 only applies to transactions entered on or after June 29, 2011." *Fallon, supra*, at ¶11, fn. 2. Therefore, we apply R.C. 1301.01 to the instant appeal.

{¶30} A "person entitled to enforce" an instrument includes the holder of the instrument. R.C. 1303.31. Further, "holder" means either of the following:

{¶31} (a) If the instrument is payable to bearer, a person who is in possession of the instrument;

{¶32} (b) If the instrument is payable to an identified person, the identified person when in possession of the instrument. R.C. 1301.01(T)(1).

{¶33} "Thus, to be a 'holder,' a party must be in possession of the instrument that is either payable to the party in possession (specifically endorsed), or payable to bearer (blank endorsement * * *)." *Fallon, supra*, at ¶12.

{¶34} "'[S]pecial indorsement' means an indorsement that is made by the holder of an instrument, whether payable to an identified person or payable to the bearer, and that identifies a person to whom it makes the instrument payable. An instrument, when specially indorsed, becomes payable to the identified person and may be negotiated only by the indorsement of that person." R.C. 1303.25(A).

{¶35} Further, "'[b]lank indorsement' means an indorsement that is made by the holder of the instrument and that is not a special indorsement. When an instrument is indorsed in blank, the instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed." R.C. 1303.25(B).

{¶36} "A blank endorsement is usually the signature of the indorser on the back of the instrument without other words." Official comment to R.C. 1303.25.

{¶37} R.C. 1303.25(C) authorizes the conversion of a blank endorsement to a special endorsement, as follows:

> **{¶38}** *The holder may convert a blank indorsement that consists only of a signature into a special indorsement by writing above the signature of the indorser words identifying the person to whom the instrument is made payable.* (Emphasis added.)

{¶39} Here, Lakeland specially endorsed the note to Ohio Savings Bank. Thereafter, Ohio Savings Bank endorsed the note in blank. On May 31, 2005, Wells Fargo became the holder of the note and the servicer of this loan. Later, but before this action was filed, Wells Fargo converted the blank endorsement to a special endorsement naming Wells Fargo as the endorsee. Wells Fargo has been in continuous possession of the original note since May 31, 2005. This action was filed on September 2, 2011, long after Wells Fargo obtained possession of the note. Thus,

Wells Fargo established it had standing to file this action based on its status as holder of the note and servicer of the loan.

{¶40} In addition, MERS, the holder of the mortgage, assigned it to Wells Fargo by written assignment on July 20, 2011, more than one month before the complaint was filed. Thus, Wells Fargo established it also had standing based on its status as assignee of the mortgage. *Schwartzwald, supra*.

{¶41} Turning now to appellant's four issues, first, he argues that because a nonparty, Fannie Mae, became owner of the note and mortgage in 2009, Wells Fargo was not entitled to foreclose the mortgage. We do not agree.

{¶42} Ohio's version of the Uniform Commercial Code specifically provides that in order to be a holder and thus entitled to enforce an instrument, e.g., a note, one is not required to own the instrument. R.C. 1303.31(B) provides: "A person may be a 'person entitled to enforce' the instrument [, i.e., the holder of the note,] even though the person is not the owner of the instrument * * *."

{¶43} Ohio Appellate Districts have stated that, "'because a promissory note is transferred through the process of negotiation, ownership is not a requirement for enforcement of the note.'" *Bank of America, N.A. v. Merlo*, 11th Dist. Trumbull No. 2012-T-0103, 2013-Ohio-5266, ¶15, quoting *U.S. Bank, N.A. v. Coffey*, 6th Dist. Erie No. E-11-026, 2012-Ohio-721, ¶20. As a result, this court has held that the holder of a note is not additionally required to plead that it is the owner of the note in its complaint. *Nat'l City Real Estate Services, LLC v. Shields*, 11th Dist. Trumbull No. 2012-T-0076, 2013-Ohio-2839, ¶21. Thus, although Fannie Mae owned the note, Wells Fargo, as holder of the note, was entitled to enforce it by filing this action.

{¶44} During Ms. Rowles' deposition, she said that Wells Fargo is the servicing agent for this loan on behalf of Fannie Mae. Pursuant to R.C. 1303.31(B), Wells Fargo's right to enforce the note as its holder is perfectly consistent with Fannie Mae's ownership of the mortgage loan, including the note. *Merlo, supra.* Thus, Fannie Mae's ownership of the note when the complaint was filed is irrelevant to Wells Fargo's standing to file this action. *Bank of Am., N.A. v. Pasqualone,* 10th Dist. Franklin No. 13AP-87, 2013-Ohio-5795, ¶25.

{¶45} Further, while Fannie Mae acquired the mortgage loan on May 31, 2009, MERS, the holder of the mortgage, assigned it to Wells Fargo on July 20, 2011. Thus, Fannie Mae's ownership of the loan is likewise irrelevant to Wells Fargo's standing based on its status as assignee of the mortgage.

{¶46} Second, appellant attempts to create a fact issue regarding the validity of the endorsements on the note by arguing that after Ohio Savings endorsed the note in blank and Wells Fargo became its holder, Wells Fargo improperly converted the blank endorsement into a special endorsement in favor of Wells Fargo. However, that practice is expressly authorized by R.C. 1303.25(C), as fully discussed above.

{¶47} In any event, even if the special endorsement was ineffective, as appellant argues, when Ohio Savings endorsed the note in blank and Wells Fargo obtained possession of it on May 31, 2005, Wells Fargo became the holder of the note with the right to enforce it. While the record is silent as to why Wells Fargo converted the blank endorsement to a special endorsement, that conversion was unnecessary to create holder status in Wells Fargo because it was already the holder of the note by virtue of its possession of that instrument, which was payable to the bearer.

{¶48} Next, appellant argues there is no evidence the endorsement allonge was affixed to the original note when the complaint was filed. He argues that if the allonge was not attached to the original note at that time, the note would be payable to Lakeland, not Wells Fargo. However, based on our review of the record, the allonge was attached to the original note when the complaint was filed. Ms. Weatherly and Ms. Rowles said that Wells Fargo has had possession of the "original" note with the allonge attached to it since May 31, 2005. Further, Ms. Rowles said the note, which included the allonge, attached to the complaint is an exact copy of the original note. Thus, the allonge was attached to the original note when the complaint was filed on September 2, 2011.

{¶49} Appellant also argues that because the note had five pages when it was scanned into Wells Fargo's system in 2005, but only four pages when it was again scanned in in 2011, there is an issue of fact regarding the note's validity. However, Ms. Rowles explained the additional page was merely a cover page for the note and not part of the note, which, she said, is four pages long. Thus, no genuine issue was created by this discrepancy.

{¶50} Based on the foregoing analysis, there is no genuine issue of fact regarding the validity of the note endorsements.

{¶51} Third, appellant argues there is a fact issue regarding whether the mortgage was validly assigned because the mortgage assignment was signed by Mark Lee, an agent of Wells Fargo, the assignee.

{¶52} However, it is well settled in Ohio that mortgage debtors do not have standing to challenge mortgage assignments. In *Waterfall Victoria Master Fund v. Yeager*, 11th Dist. Lake No. 2012-L-071, 2013-Ohio-3206, a case decided post-

Schwartzwald, this court held that when a mortgagor/debtor, such as appellant, is not a party to the mortgage assignment, and his contractual obligations under the mortgage are not affected in any way by the assignment, the debtor lacks standing to challenge the validity of the assignment. *Id*. at ¶21, citing *Deutsche Bank Natl. Trust Co. v. Rudolph*, 8th Dist. Cuyahoga No. 98383, 2012-Ohio-6141, ¶24. In *Waterfall*, this court explained its holding was based on the recognition that "an assignment does not alter the mortgagor/debtor's obligations under the note or mortgage and that the foreclosure complaint is based on the mortgagor's default under the note and mortgage - not because of the mortgage assignment." *Id*. at ¶25. This court recently followed its holding in *Waterfall* in *Antes, supra*, at ¶36, and *PennyMac Corp. v. Nardi*, 11th Dist. Portage No. 2014-P-0014, 2014-Ohio-5710, ¶17.

{¶53} Pursuant to this court's precedent, appellant does not have standing to challenge the mortgage assignment at issue here between MERS and Wells Fargo.

{¶54} In any event, even if appellant could challenge the assignment, its argument would lack merit because Ms. Rowles testified that Mr. Lee "ha[d] the authority to execute the assignment on behalf of [MERS]. She said that MERS passed a resolution giving Mr. Lee the authority to sign such documents for it during that time period. Thus, appellant's challenge to the validity of the mortgage assignment is a non-issue. It is also worth noting that an agent can properly serve two masters as long as the performance of duties for one does not conflict with performance for the other. *Johnson v. N. British & Mercantile Ins. Co*., 66 Ohio St. 6, 14 (1902). MERS' resolution authorizing Mr. Lee to sign this document makes it clear that, in MERS' view, the performance of Mr. Lee's duties for Wells Fargo did not conflict with his signing the mortgage assignment on behalf of MERS.

{¶55} Appellant also argues there is a fact issue regarding the validity of the mortgage assignment because the assignment was executed on July 20, 2011, after the original lender, Lakeland, no longer had an interest in the mortgage. In making this argument, appellant incorrectly assumes Lakeland was the mortgagee. In fact, MERS was the mortgagee and, as such, was authorized to assign the mortgage to Wells Fargo. Further, the mortgage itself expressly provides that appellant agrees that MERS (as nominee for the lender, Lakeland, and its successors and assigns) has the right to foreclose the mortgage.

{¶56} Thus, there is no genuine issue regarding the validity of the mortgage.

{¶57} Fourth, appellant argues that Ms. Weatherly's affidavit was insufficient to support summary judgment because her affidavit was not made on personal knowledge. We disagree.

{¶58} Civ.R. 56(E) provides in pertinent 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."

{¶59} "[The] mere assertion of personal knowledge satisfies the personal knowledge requirement of Civ.R. 56(E) if the nature of the facts in the affidavit combined with the identity of the affiant creates a reasonable inference that the affiant has personal knowledge of the facts in the affidavit." *Bank One, N.A. v. Lytle*, 9th Dist. Lorain No. 04CA008463, 2004-Ohio-6547, ¶13.

{¶60} It is well settled that personal knowledge may be inferred from the contents of an affidavit. *Bush v. Dictaphone Corp*., 10th Dist. Franklin No. 00AP1117, 2003-Ohio-883, ¶73.

{¶61} Further, a witness providing the foundation for a recorded business activity is not required to have firsthand knowledge of the transaction at issue. *Huntington Nat'l Bank v. Blount*, 8th Dist. Cuyahoga No. 98514, 2013-Ohio-3128. However, it must be shown that the witness is sufficiently familiar with the operation of the business and with the circumstances of the record's preparation and maintenance, that he can testify the record is what it purports to be and was made in the ordinary course of business. *Moore v. Vandemark Co., Inc.,* 12th Dist. Clermont No. CA2003-07-063, 2004-Ohio-4313, ¶18.

{¶62} Ms. Weatherly stated in her affidavit that she is vice-president for Wells Fargo working in loan documentation, and that, as such, she is authorized to execute her affidavit on behalf of Wells Fargo. She said that as part of her job, she has access to Wells Fargo's business records, including the loan account records maintained by Wells Fargo, such as those created in connection with the instant loan. She said she has personal knowledge of Wells Fargo's procedures for compiling and maintaining these records. She said she made her affidavit based on her personal knowledge obtained from her personal review of Wells Fargo's business records for the instant mortgage loan. She said the information in her affidavit was based on these business records, which were made at or near the time of the occurrence of events referenced therein by persons with personal knowledge of the information in the records. She also said these records are maintained in the course of Wells Fargo's regularly-conducted business.

{¶63} Appellant argues Ms. Weatherly's affidavit was not made on personal knowledge because she never compared the original note to the copy. However, to the contrary, she stated in her affidavit that she reviewed Wells Fargo's business records

for the instant loan, which included the original note. She said Wells Fargo currently has possession of the "original note" and has had possession of it since May 31, 2005. She said that the copy of the note attached to her affidavit is a true and accurate copy of the original note. These statements indicate that Ms. Weatherly compared the original note to the copy of the note attached to her affidavit.

{¶64} Appellant also argues that Ms. Weatherly's affidavit testimony that Wells Fargo obtained possession of the note on May 31, 2005, cannot be considered because it is hearsay in that she did not attach any exhibits to her affidavit showing when Wells Fargo first obtained possession of the note. However, appellant makes this argument for the first time on appeal. Generally, appellate courts do not "consider an error which the complaining party 'could have called, but did not call, to the trial court's attention at a time when such error could have been avoided or corrected by the trial court.'" *State ex rel. Quarto Mining Co. v. Foreman*, 79 Ohio St.3d 78, 81 (1997), quoting *State v. Williams*, 51 Ohio St.2d 112, 117 (1977). Where a party asserts an argument for the first time on appeal, the argument is waived. *State ex rel. Camaco, LLC v. Albu*, 10th Dist. Franklin No. 13AP-1002, 2014-Ohio-5330, ¶8-9. Because appellant did not raise his hearsay argument below, it cannot be considered on appeal.

{¶65} In any event, appellant filed the deposition testimony of Susan Rowles, officer of Wells Fargo, in which she testified that Wells Fargo obtained possession of the original note on May 31, 2005. Thus, any error in Ms. Weatherly's affidavit is harmless since appellant presented the same information via Ms. Rowle's deposition.

{¶66} Based on her position at Wells Fargo and her familiarity with Wells Fargo's business operations and the circumstances regarding the preparation and maintenance

of its business records, it is reasonable to infer Ms. Weatherly's affidavit was based on her personal knowledge.

{¶67} We therefore hold the trial court did not err in entering summary judgment in favor of Wells Fargo.

{¶68} For appellant's second and last assigned error, he contends:

{¶69} "The trial court erred by granting a judgment of foreclosure when appellee did not demonstrate compliance with all conditions precedent to foreclosure."

{¶70} Appellant argues that Wells Fargo failed to comply with the requirement in the mortgage that, prior to acceleration, the lender must send a notice of default to the debtor by first class mail. Appellant argues that Ms. Weatherly only stated in her affidavit that Wells Fargo "sent" appellant a default letter without specifying that the notice was sent by first class mail, as required by the terms of the mortgage.

{¶71} However, this argument lacks merit because Ms. Rowles testified that the notice was sent to appellant via "regular mail." First class mail is also referred to as "regular" or "ordinary mail." *Bank of N.Y. Mellon v. Roarty*, 7th Dist. Mahoning No. 10-MA-42, 2012-Ohio-1471, ¶29; *Shade v. Bleser*, 2d Dist. Montgomery No. 20938, 2005-Ohio-6544, ¶31.

{¶72} Next, appellant argues the notice of default was insufficient because Fannie Mae owned the mortgage and thus Fannie Mae, not Wells Fargo, should have sent the notice of default to appellant. However, the mortgage provides that the "lender" is to send this notice. As of the date of appellant's default, Wells Fargo was the successor lender and the proper party to send the notice of default to appellant.

{¶73} Alternatively, appellant argues that while an entity called "Wells Fargo Home Mortgage" sent the notice of default to appellant, there is no evidence Wells

Fargo Home Mortgage was acting on behalf of Wells Fargo. However, Ms. Rowles testified that Wells Fargo is a "successor by merger" to Wells Fargo Home Mortgage and that Wells Fargo Home Mortgage is a "division of Wells Fargo." As a result, Wells Fargo Home Mortgage is part of Wells Fargo, and the trial court did not err in finding that Wells Fargo properly sent the notice of default to appellant.

For the reasons stated in the opinion of this court, the assignments of error are overruled. It is the judgment and order of this court that the judgment of the Ashtabula County Court of Common Pleas is affirmed.

TIMOTHY P. CANNON, P.J., concurs,

COLLEEN MARY O'TOOLE, J., concurs in judgment only.