

[Cite as *LaSalle Bank Natl. Assn. v. Smith*, 2015-Ohio-5597.]

STATE OF OHIO, MAHONING COUNTY
IN THE COURT OF APPEALS
SEVENTH DISTRICT

LaSALLE BANK NATIONAL
ASSOCIATION, ETC.

PLAINTIFF-APPELLEE

VS.

RONALD J. SMITH, et al.

DEFENDANTS-APPELLANTS

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CASE NO. 13 MA 148

OPINION

CHARACTER OF PROCEEDINGS:

Civil Appeal from Court of Common Pleas
of Mahoning County, Ohio
Case No. 05 CV 3869

JUDGMENT:

Affirmed

APPEARANCES:

For Plaintiff-Appellee

Attorney Anne Sferra
100 South Third Street
Columbus, Ohio 43215-4291

For Defendants-Appellants

Attorney Bruce Broyles
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Boardman, Ohio 44512

JUDGES:

Hon. Mary DeGenaro
Hon. Gene Donofrio
Hon. Carol Ann Robb

Dated: December 30, 2015

[Cite as *LaSalle Bank Natl. Assn. v. Smith*, 2015-Ohio-5597.]
DeGENARO, J.

{¶1} Defendants-Appellants, Ronald J. Smith and Nancy L. Smith, appeal the judgment of the Mahoning County Court of Common Pleas denying their motion to vacate the foreclosure decree entered against them. On appeal, the Smiths assert that the trial court erred by failing to grant their motion because LaSalle Bank, National Association, as Trustee for Certificate Holders Of Bear Stearns Asset-Backed Certificates, Series 2004-HE5, Plaintiff-Appellee, lacked standing which rendered the contested judgment void ab initio. The Smiths' arguments are meritless. Lack of standing does not affect the trial court's subject matter jurisdiction. *Bank of America, N.A. v. Kuchta*, 141 Ohio St.3d 75, 2014-Ohio-4275, 21 N.E.3d 1040. Thus, any alleged standing issue was not a basis for voiding the foreclosure. Accordingly, the judgment of the trial court is affirmed.

{¶2} Defendant-Appellants Ronald J. and Nancy Smith executed an adjustable rate Note in favor of Encore Credit Corporation on March 5, 2004, in the original amount of \$528,500.00, which was secured by a Mortgage recorded on March 15, 2004. This Note and Mortgage were transferred by Encore through assignment to LaSalle Bank National Association on March 22, 2004 which was recorded on May 10, 2005.

{¶3} After a default occurred due to nonpayment, LaSalle instituted foreclosure proceedings against the Smiths on October 13, 2005. LaSalle filed a motion for summary judgment which the trial court granted on January 12, 2007, and the Smiths failed to appeal from the foreclosure judgment. The Smiths subsequently filed for bankruptcy. The stay was lifted by the trial court in February 2011, and the Smiths moved for reconsideration and relief from judgment from the January 12, 2007 order pursuant to Civ.R. 60(B), which the trial court denied in May 2011. The Smiths appealed, and we affirmed the denial of the motions. *LaSalle Bank Natl. Assoc. v. Smith*, 7th Dist. No. 11 MA 85, 2012-Ohio-4040.

{¶4} In 2013, the Smiths filed a motion to vacate the 2007 decree with the trial court, as well as a motion to stay execution pending resolution of the motion to vacate. The trial court denied the motion to vacate and the Smiths timely appealed.

{¶5} In the Smiths' sole assignment of error, they assert:

The trial court erred in denying the motion to vacate.

{¶16} The Smith's common-law motion to vacate was premised on the contention that LaSalle lacked standing, specifically that LaSalle did not possess the promissory note or an interest in the mortgage at the time the complaint was filed because it was obtained in a manner which allegedly violated the Pooling and Servicing Agreement. Because of this purported lack of standing, the Smiths contend the trial court lacked subject matter jurisdiction, which would render the foreclosure judgment void, as opposed to voidable.

{¶17} Since the filing of the notice of appeal in this action, the Supreme Court of Ohio has decided a conflict between districts regarding the issue of standing and subject matter jurisdiction. In *Kuchta, supra*, 141 Ohio St.3d 75, the Court concluded that although "[l]ack of standing is certainly a fundamental flaw that would require a court to dismiss the action, * * * and any judgment on the merits would be subject to reversal on appeal,* * * a particular party's standing, or lack thereof, does not affect the subject-matter jurisdiction of the court in which the party is attempting to obtain relief." (Citations omitted.) *Id.* at ¶23. Accordingly, the Court held that a lack of standing would not cause a foreclosure judgment to be void ab initio. *Id.* at ¶ 24. See also *U.S. Bank, N.A. v. Metzger*, 7th Dist. No. 14MA63, 2015-Ohio-839, ¶21.

{¶18} Based upon *Kuchta*, the Smiths' argument that LaSalle's purported lack of standing deprived the trial court of subject matter jurisdiction, making the underlying foreclosure order void, is meritless. Therefore, the trial court properly denied the motion to vacate. Accordingly, the Smiths' sole assignment of error is meritless. The judgment of the trial court is affirmed.

Donofrio, P.J., concurs

Robb, J., concurs