[Cite as *U.S. Bank Natl. Assn. v. Gray*, 2013-Ohio-3340.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

U.S. Bank National Association, as Trustee For the Holders of the First Franklin Mortgage Loan Trust Pass-Through Certificates, Series 2005-FF3,	:	
Plaintiff-Appellee,	:	No. 12AP-953
	:	(C.P.C. No. 10CVE-01-4953)
v.	:	(REGULAR CALENDAR)
Paul G. Gray et al.,	:	
Defendants-Appellants.	:	

D E C I S I O N

Rendered on July 30, 2013

Cartpenter Lipps & LeLand LLP, *David A. Wallace* and *Karen M. Cadieux*, for appellee.

Doucet & Associates, Inc., *Gregory A. Wetzel* and *Troy J. Doucet*, for appellants.

APPEAL from the Franklin County Court of Common Pleas

KLATT, P.J.

{¶ 1} Defendants-appellants, Paul G. and Connie M. Gray,[1] appeal a judgment of the Franklin County Court of Common Pleas in favor of plaintiff-appellee, U.S. Bank National Association, as Trustee For the Holders of the First Franklin Mortgage Loan

[1] The Grays are parties in both their individual capacities and as co-trustees of the Paul G. Gray and Connie M. Gray Revocable Trust U/A Dated July 25, 2005.

Trust Pass-Through Certificates, Series 2005-FF3 ("US Bank"). For the following reasons, we affirm.

{¶ 2} In 2005, the Grays purchased a house from M/I Homes, Inc. At the January 20, 2005 closing, Paul Gray executed an adjustable-rate note in the amount of $246,750 in favor of First Franklin, a Division of National City Bank of Indiana ("First Franklin Division"). Both Paul and Connie Gray executed a mortgage to secure the note. First Franklin Division recorded the mortgage with the Franklin County Recorder's Office.

{¶ 3} Paul Gray's loan was pooled with other loans and transferred to a trust, which sold the consolidated debt as securities. The trust was structured so that US Bank would serve as trustee and hold the mortgage loans conveyed to the trust. To accomplish the transfer of Paul Gray's note to US Bank, First Franklin Division indorsed the note to First Franklin Financial Corporation ("First Franklin Corporation") in or around March 2005. Soon thereafter, First Franklin Corporation indorsed the note in blank. The note then was then physically transferred to a custodian selected by US Bank.

{¶ 4} Unfortunately, First Franklin Division botched the transfer of the Grays' mortgage to the trust. On January 25, 2005, First Franklin Corporation assigned the mortgage to US Bank. At the time it made the assignment, First Franklin *Division*—not First Franklin *Corporation*—was the holder of the mortgage. The purported assignment, therefore, did not accomplish anything. On March 22, 2005, First Franklin Division assigned the mortgage to First Franklin Corporation. The mortgage then joined the note in the custodian's care, even though no assignment to US Bank had occurred.

{¶ 5} Beginning early 2009, Paul Gray fell behind on his loan payments and the Grays stopped remitting their property taxes. The servicing agent for Paul Gray's loan, Select Portfolio Servicing, Inc. ("SPS"), paid the Grays' property taxes and added the amounts advanced to the total amount that Paul Gray owed. Paul Gray last made a loan payment on April 27, 2010. In a letter dated July 13, 2010, SPS notified Paul Gray that he had defaulted on his payment obligations, and that he could cure the default by paying $9,474.34 within 30 days. Paul Gray did not make the $9,474.34 payment.

{¶ 6} On October 12, 2010, US Bank filed this foreclosure action against the Grays. The complaint alleged that US Bank was the holder of the Grays' note and mortgage. However, the copy of the note attached to the complaint did not include any

indorsements. The copy of the mortgage attached to the complaint included only the January 25, 2005 assignment from First Franklin Corporation to US Bank.

{¶ 7} US Bank moved for summary judgment. In response, the Grays argued that genuine questions of material fact remained regarding whether US Bank was the holder of the Grays' note and mortgage. The trial court agreed with the Grays, and it denied US Bank summary judgment.

{¶ 8} At a bench trial, US Bank produced a copy of the note that included First Franklin Division's indorsement to First Franklin Corporation and First Franklin Corporation's indorsement in blank. US Bank contended that it was the holder of the note because it possessed the note. With regard to the mortgage, US Bank acknowledged that no valid written assignment to US Bank existed. Nevertheless, US Bank contended that it was the holder of the Grays' mortgage through equitable assignment.

{¶ 9} In its findings of fact and conclusions of law, the trial court found that US Bank was the holder of the Grays' note and mortgage. The trial court also found that Paul Gray had defaulted on the note, and that no defenses asserted by the Grays prevented foreclosure or reduced the amount owed. On October 16, 2012, the trial court issued a judgment decree in foreclosure.

{¶ 10} The Grays appeal from the October 16, 2012 judgment, and they assign the following errors:

> 1. The trial court erred when it found SPS had authority to testify on U.S. Bank's behalf.
>
> 2. The trial court erred when it held Plaintiff had an interest in the subject property upon which it could foreclose.
>
> 3. The trial court erred when it held Plaintiff was a holder of the note.
>
> 4. The trial court erred when it failed to find Plaintiff had perpetrated a fraud on the court.
>
> 5. The trial court erred when it failed to find in the Grays' favor on their FDCPA claim.

{¶ 11} By the Grays' first assignment of error, they argue that Diane Weinberger, the director of SPS' customer assurance review department, was not competent to answer

questions for or on behalf of US Bank. According to the Grays, the trial court erred in allowing Weinberger to testify because US Bank did not establish that she had US Bank's authority to testify. We find no error in the trial court's decision to allow Weinberger's testimony.

{¶ 12} Evid.R. 601 sets forth the general rule for witness competency. That rule states that every person is competent to testify, but lists enumerated exceptions. *Id.* Weinberger does not fit within any of the exceptions.

{¶ 13} After qualifying under Evid.R. 601, a witness must limit his or her testimony to matters within his or her personal knowledge. Evid.R. 602 ("A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter."). "Personal knowledge" is " '[k]nowledge gained through firsthand observation or experience, as distinguished from a belief based on what someone else has said.' " *Bonacorsi v. Wheeling & Lake Erie Ry. Co.*, 95 Ohio St.3d 314, 2002-Ohio-2220, ¶ 26, quoting *Black's Law Dictionary* 875 (7th Ed.1999). A trial court has wide discretion in determining whether a witness has sufficient personal knowledge to testify. *Starinchak v. Sapp*, 10th Dist. No. 04AP-484, 2005-Ohio-2715, ¶ 27. An appellate court will not disturb such a determination absent an abuse of discretion. *Id.*

{¶ 14} Here, Weinberger testified to a wide variety of matters, including SPS' relationship with US Bank, SPS' responsibility to manage the Grays' mortgage loan, the transfers of the Grays' note and mortgage, the payment history of the Grays' mortgage loan, amounts disbursed to pay the Grays' property taxes, and the total amount owed to US Bank. Weinberger explained that she had personal knowledge about these matters because she reviewed SPS' records regarding the Grays' mortgage loan. She also explained that SPS is the servicing agent for that loan and, in that role, SPS:

> [C]ollect[s] the payments, * * * distribute[s] those payments back to the investor, * * * communicate[s] with the customer, * * * disburse[s] escrow[ed] [money], * * * manage[s] litigation or take[s] foreclosure action if that's necessary, provide[s] notices, [and] compl[ies] with state requirements[.] [A]nything having to do with the maintenance on a day-to-day basis of a loan after it's been originated and needs to be serviced and payments collected, that is what [SPS] do[es].

(Tr. Vol. I, 9.) Weinberger testified that SPS provides these services for the mortgage loans held by US Bank pursuant to a power of attorney that US Bank has given to SPS.

{¶ 15} The Grays do not challenge Weinberger's personal knowledge regarding the matters she testified about. Rather, the Grays argue that the trial court should have excluded Weinberger's testimony because she lacked US Bank's permission to testify on its behalf. Nothing in the Rules of Evidence requires a witness or the party that calls the witness to prove the witness' authority to testify. Personal knowledge, not authority to testify, is the measure by which a court determines what a witness may testify about. The trial court determined that Weinberger had sufficient personal knowledge to testify, and the Grays present no argument to the contrary. Consequently, we overrule the Grays' first assignment of error.

{¶ 16} By the Grays' second assignment of error, they argue that US Bank did not have standing to file this action or, alternatively, that US Bank did not prove all the elements necessary to foreclose on the Grays' mortgage. To decide the question of standing, we must determine whether US Bank was the holder of the note Paul Gray executed. Therefore, we will combine our analyses of the second assignment of error and the third assignment of error, whereby the Grays argue that the trial court erred in finding that US Bank was the holder of the note. We reject the arguments underlying both assignments of error.

{¶ 17} Standing is " '[a] party's right to make a legal claim or seek judicial enforcement of a duty or right.' " *Ohio Pyro, Inc. v. Ohio Dept. of Commerce*, 115 Ohio St.3d 375, 2007-Ohio-5024, ¶ 27, quoting *Black's Law Dictionary* 1442 (8th Ed.2004). A court lacks jurisdiction to consider the merits of a legal claim unless a plaintiff establishes standing to sue. *Fed. Home Loan Mtge. Corp. v. Schwartzwald*, 134 Ohio St.3d 13, 2012-Ohio-5017, ¶ 22. As standing is jurisdictional in nature, it may be raised at any time in the proceedings. *Id.*

{¶ 18} A party has standing to sue if it has a personal stake in the outcome of a controversy. *Id.* at ¶ 21; *Ohio Pyro, Inc.* at ¶ 27. A personal stake requires injury caused by the defendant that has some remedy in law or equity. *State ex rel. Walgate v. Kasich*, 10th Dist. No. 12AP-548, 2013-Ohio-946, ¶ 11; *Fed. Home Loan Mtge. Corp. v. Rufo*, 11th Dist. No. 2012-A-0011, 2012-Ohio-5930, ¶ 17.

{¶ 19} Standing depends on the state of things at the time the action is commenced. *Schwartzwald* at ¶ 24-25. Thus, a plaintiff cannot rely on events occurring after the filing of the complaint to establish standing. *Id.* at ¶ 26. To have standing to pursue a foreclosure action, a plaintiff must "establish an interest in the note or mortgage at the time it filed suit." *Id.* at ¶ 28.

{¶ 20} Although a court must determine whether standing exists by examining the state of affairs at the time the action commenced, its examination is not limited to the complaint's allegations or documents attached to the complaint. *Deutsche Bank Natl. Trust Co. v. Najar*, 8th Dist. No. 98502, 2013-Ohio-1657, ¶ 57; *Bank of New York Mellon v. Watkins*, 10th Dist. No. 11AP-539, 2012-Ohio-4410, ¶ 18. Standing is an indispensable part of the plaintiff's case, and thus, the plaintiff must prove standing in the same manner the plaintiff bears the burden of proof, i.e., with the manner and degree of evidence required at the successive stages of litigation. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). A court, therefore, evaluates standing by examining the allegations and/or evidence offered at each stage of litigation.

{¶ 21} As the litigation in the instant case extended to trial, we must examine whether the evidence offered at trial proved US Bank's standing. If US Bank established with trial evidence that it had "an interest in the note or mortgage at the time it filed suit," then it suffered the necessary injury to pursue its foreclosure action against the Grays. *Schwartzwald* at ¶ 28. Thus, we must determine whether US Bank had an interest in the Grays' note or mortgage.

{¶ 22} At trial, US Bank produced the original note that Paul Gray executed in favor of First Franklin Division. The note displays an indorsement by First Franklin Division to First Franklin Corporation and an indorsement by First Franklin Corporation in blank. Weinberger testified that both indorsements were placed on the note in or around March 2005. After it was indorsed, the note was sent to the custodian selected by US Bank, where it remained until SPS requested it while preparing to instigate the instant litigation. During the trial, SPS possessed the note on behalf of US Bank.

{¶ 23} R.C. 1301.01 et seq., Ohio's version the Uniform Commercial Code ("UCC"), governs the creation, transfer, and enforceability of negotiable instruments, including notes secured by mortgages on real estate. *U.S. Bank, N.A. v. McGinn*, 6th Dist. No. S-12-

004, 2013-Ohio-8, ¶ 15. Pursuant to R.C. 1303.31(A)(1), the definition of a " '[p]erson entitled to enforce' an instrument" includes "[t]he holder of the instrument." If the instrument is payable to bearer, then the person in possession of the instrument is the holder of the instrument. R.C. 1301.01(T)(1)(a).[2] "When an instrument is indorsed in blank, the instrument becomes payable to bearer." R.C. 1303.25(B). A "blank indorsement" is an indorsement that is made by the holder of the instrument that does not identify the person to whom the instrument is payable. *Id.*

{¶ 24} Here, the final indorsement on Paul Gray's note is a blank indorsement. Therefore, the holder of the note is the person in possession of the note. The Grays assert that SPS is in possession of the note and, therefore, SPS, not US Bank, is the holder of the note. If SPS is the holder, as the Grays contend, then US Bank has neither an interest in the note nor standing to sue on the note.

{¶ 25} Possession is a key element of being a holder. However, nothing in R.C. 1301.01 et seq. defines "possession." Therefore, the non-UCC concept of constructive possession remains in force. R.C. 1301.103(B). Constructive possession exists when an agent of the owner holds the note on behalf of the owner. *Midfirst Bank, SSB v. C.W. Haynes & Co., Inc.*, 893 F.Supp. 1304, 1314 (D.S.C.1994), *aff'd*, 87 F.3d 1308 (4th Cir.1996); *Bankers Trust (Delaware) v. 236 Beltway Invest.*, 865 F.Supp. 1186, 1195 (E.D.Va.1994). Consequently, a person is a holder of a negotiable instrument, and entitled to enforce the instrument, when the instrument is in the physical possession of his or her agent. 1A Lawrence, *Anderson on the Uniform Commercial Code*, Section 1-201:265 (3d Ed.); *In re Phillips*, 491 B.R. 255, 262-64 (Bankr.D.Nev.2013) (servicing agent's possession of the note meant that the principal was the holder); *In re Moehring*, 485 B.R. 571, 576-77 (Bankr.S.D.Ohio 2013) (trustee was holder of and could enforce the note possessed by its servicing agent). The doctrine of constructive possession is consistent with UCC principles governing transfer of negotiable instruments. As recognized in the official comment to the UCC's definition of negotiation, "[n]egotiation always requires a change in possession of the instrument because nobody can be a holder

[2] R.C. 1301.01 was repealed by 2011 Am.H.B. No. 9 and renumbered as R.C. 1301.201. Because R.C. 1301.201 only applies to transactions entered on or after June 29, 2011, we apply former R.C. 1301.01 to this appeal.

without possessing the instrument, *either directly or through an agent*." (Emphasis added.) UCC Official Comment, Section 3-201, Comment 1 (1990).

{¶ 26} Here, Weinberger testified that SPS acts as the servicing agent for US Bank, managing all the day-to-day aspects of Paul Gray's loan pursuant to a power of attorney that US Bank granted it. As US Bank's agent, SPS held the note on US Bank's behalf. US Bank, therefore, maintained constructive possession of the note and, as holder of the note, could enforce it.

{¶ 27} Pursuant to *Schwartzwald*, because US Bank had an interest in the note, it had standing to sue. The Grays, however, argue that US Bank lacked standing because it failed to prove that it had an interest in the note *and* the mortgage. This argument is inconsistent with the plain language of *Schwartzwald*, which only requires a plaintiff to "establish an interest in the note *or* mortgage at the time it filed suit." (Emphasis added.) *Id.* at ¶ 28. Thus, an interest in the note alone establishes standing. *CitiMortgage, Inc. v. Patterson*, 8th Dist. No. 98360, 2012-Ohio-5894, ¶ 21-22.

{¶ 28} In arguing to the contrary, the Grays point to the decision of the Supreme Court of Ohio to accept the appeal in *CitiMortgage, Inc. v. Schippel*, 134 Ohio St.3d 1435, 2013-Ohio-161, and remand for application of *Schwartzwald*. In *CitiMortgage, Inc. v. Schippel*, 6th Dist. No. E-11-041, 2012-Ohio-3511, the Sixth District affirmed a grant of summary judgment in a foreclosure case after finding that the evidence established that that the plaintiff was the holder of the mortgage note and no genuine issues of material fact on that question existed. The Sixth District's opinion did not specify how or when the plaintiff became the holder of the note. The defendant sought Supreme Court review on the legal proposition that a note should be in the name of the plaintiff or indorsed to the plaintiff at the time of the filing of the complaint. Although the Supreme Court accepted the appeal, it did not decide the appeal on its merits or reverse the Sixth District's opinion. Rather, the Supreme Court merely remanded the case to the Sixth District for application of *Schwartzwald*.

{¶ 29} The Grays point out that the Sixth District restricted its analysis to the note, and did not address whether the plaintiff was the holder of the mortgage. Thus, they contend that the remand proves that the Supreme Court intended standing to hinge upon an interest in the note *and* mortgage at the commencement of suit. This contention

requires us to invest the remand with meaning that it does not clearly have. The Grays would have us reject the plain language of *Schwartzwald* based on broad speculation about the Supreme Court's reason for granting the remand. Given the holding in *Schwartzwald* and the proposition of law asserted in *Schippel*, we think it more likely that Supreme Court remanded so that the Sixth District could consider whether the plaintiff proved on summary judgment that it was the holder of the note when the complaint was filed. We therefore reject the Grays' argument that a plaintiff does not have standing unless it proves an interest in the note and mortgage.

{¶ 30} Regardless, we must address whether US Bank was the holder of the Grays' mortgage. A party seeking to foreclosure on a mortgage must establish that it is the current holder of both the note *and* mortgage. *Home S. & L. Co. v. Eichenberger*, 10th Dist. No. 12AP-1, 2012-Ohio-5662, ¶ 17. Thus, we now turn to the question of whether US Bank was the holder of the Grays' mortgage.

{¶ 31} US Bank acknowledges that, prior to the filing of its complaint, no written assignment transferred the mortgage to it. Nevertheless, US Bank contends that it held the mortgage pursuant to equitable assignment.

{¶ 32} Under Ohio common law, where a promissory note is secured by a mortgage, the note is evidence of the debt and the mortgage is a mere incident of the debt. *Edgar v. Haines*, 109 Ohio St. 159, 164 (1923); *Kernohan v. Manss*, 53 Ohio St. 118, 133 (1895). Therefore, " 'the negotiation of a note operates as an equitable assignment of the mortgage, even though the mortgage is not assigned or delivered.' " *Deutsche Bank Natl. Trust Co. v. Cassens*, 10th Dist. No. 09AP-865, 2010-Ohio-2851, ¶ 17, quoting *U.S. Bank Natl. Assn. v. Marcino*, 181 Ohio App.3d 328, 2009-Ohio-1178, ¶ 52 (7th Dist.); *U.S. Bank, N.A. v. Armstrong*, 6th Dist. No. WD-12-031, 2013-Ohio-2130, ¶ 16. In other words, "[t]he physical transfer of the note endorsed in blank, which the mortgage secures, constitutes an equitable assignment of the mortgage, regardless of whether the mortgage is actually (or validly) assigned or delivered." *Najar*, 2013-Ohio-1657, at ¶ 65.

{¶ 33} Ohio's version of the UCC incorporates the common-law doctrine of equitable assignment. Pursuant to R.C. 1309.203(G), "[t]he attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security

interest, mortgage, or other lien." This division "codifies the common-law rule that a transfer of an obligation secured by a security interest or other lien on personal or real property also transfers the security interest or lien." UCC Official Comment, Section 9-203, Comment 9 (2000); *Aurora Loan Servs., LLC v. Louis*, 6th Dist. No. L-10-1289, 2012-Ohio-384, ¶ 34; *Marcino* at ¶ 53. Recently, the Permanent Editorial Board for the Uniform Commercial Code answered the question, "[w]hat if a note secured by a mortgage is sold * * *, but the parties do not take any additional actions to assign the mortgage that secures payment of the note, such as execution of a recordable assignment of the mortgage?" 9A Hawkland, *Uniform Commercial Code Series*, Section 9-203:16 [Rev] (2012). The Board explained:

> U.C.C. § 9-203(g) explicitly provides that, in such cases, the assignment of the interest of the seller or other grantor of a security interest in the note automatically transfers a corresponding interest in the mortgage to the assignee * * *. (* * * [A] "security interest" in a note includes the right of a buyer of the note.) * * * [T]he UCC is unambiguous: the sale of a mortgage note * * * not accompanied by a separate conveyance of the mortgage securing the note does not result in the mortgage being severed from the note.

Id.

{¶ 34} Here, Weinberger testified that First Franklin Corporation indorsed Paul Gray's note in blank in or around March 2005 and, soon thereafter, transferred the note to US Bank. By operation of Ohio law, when First Franklin Corporation negotiated the note, US Bank became (1) the holder of the note by virtue of its possession of the note and (2) holder of the mortgage by virtue of conveyance of the note. Thus, US Bank has proven that it is the holder of the mortgage (as well as the note), so it is entitled to foreclose. Moreover, as negotiation of the note and the concomitant transfer of the mortgage took place well before US Bank filed its complaint against the Grays, US Bank had standing to pursue the instant litigation. *See Bank of New York Mellon Trust Co., N.A. v. Loudermilk*, 5th Dist. No. 2012-CA-30, 2013-Ohio-2296, ¶ 41-42 (plaintiff bank established standing by proving that the transfer of the note, which acted as an equitable assignment of the mortgage, occurred before the complaint was filed); *McGinn*, 2013-Ohio-8, ¶ 21 (same).

{¶ 35} As a final argument, the Grays assert that the equitable assignment of the mortgage did not occur until the trial court issued its findings of fact and conclusions of law, in which the trial court found that transfer of the note to US Bank effectuated assignment of the mortgage to US Bank. Thus, the Grays argue, US Bank did not acquire an interest in the mortgage until well after the complaint was filed and, consequently, it lacked standing. This argument hinges upon the Grays' contention that standing requires proof of an interest in the note *and* mortgage, which as we stated above, contravenes the plain language of *Schwartzwald*. Moreover, we disagree with the Grays' argument that equitable assignment does not occur until a judicial determination is made. Attachment of a security interest in a right to payment (i.e., the note) is also attachment of a security interest in the mortgage, so transfer of the note also effects the transfer of the mortgage. R.C. 1309.203(G). Thus, by operation of law, transfer of the mortgage occurs at the point the note is negotiated.

{¶ 36} In sum, we conclude that US Bank had standing to foreclose on the Grays' mortgage and recover on Paul Gray's note. Additionally, US Bank proved the elements necessary to foreclose. Accordingly, we overrule the Grays' second and third assignments of error.

{¶ 37} By their fourth assignment of error, the Grays argue that we should reverse the judgment against them because US Bank perpetuated a fraud on the trial court. The Grays contend that US Bank strategically chose which versions of the note and mortgage to attach to their complaint in order to mislead the trial court. The record contains no evidence that US Bank intended to defraud the court. Moreover, at trial, US Bank submitted evidence of the full history of the transfers of the Grays' note and mortgage. Thus, the trial court was not misled, and we overrule the Grays' fourth assignment of error.

{¶ 38} By their fifth assignment of error, the Grays argue that the trial court erred when it ruled against them on their claim for violation of the Fair Debt Collection Practices Act, 15 U.S.C. 1692 et seq. ("FDCPA"). We disagree.

{¶ 39} The Grays contend that US Bank violated 15 U.S.C. 1692e, which states that "[a] debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt." In order to establish a claim under

15 U.S.C. 1692e, a plaintiff must establish that: (1) he or she is a "consumer" as defined by 15 U.S.C. 1692a(3); (2) the "debt" arises out of transactions that are "primarily for personal, family, or household purposes," 15 U.S.C. 1692a(5); (3) the defendant is a "debt collector" as defined by 15 U.S.C. 1692a(6); and (4) the defendant violated any of the prohibitions of 15 U.S.C. 1692e. *Whittaker v. Deutsche Bank Natl. Trust Co.*, 605 F.Supp.2d 914, 926 (N.D.Ohio 2009). Failure to prove any one of these elements is fatal to the plaintiff's FDCPA claim. *Id.*

{¶ 40} For purposes of the FDCPA, "debt collector" means "any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another." 15 U.S.C. 1592a(6). Thus, the FDCPA establishes two alternative predicates for "debt collector" status: either engaging in debt collection as the "principal purpose" of the entity's business or "regularly" engaging in debt collection. *Hester v. Graham, Bright & Smith, P.C. and R.*, 289 Fed.Appx. 35, 41 (5th Cir.2008); *Oppong v. First Union Mtge. Corp.*, 215 Fed.Appx. 114, 118 (3d Cir.2007); *Goldstein v. Hutton, Ingram, Yuzek, Gainen, Carroll & Bertolotti*, 374 F.3d 56, 61 (2d Cir.2004). Here, the Grays presented no evidence that US Bank satisfies either of those predicates. Accordingly, we overrule the Grays' fifth assignment of error.

{¶ 41} For the foregoing reasons, we overrule the Grays' five assignments of error, and we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

TYACK and CONNOR, JJ., concur.