[Cite as *Bank of New York Mellon v. Kurzner*, 2015-Ohio-2008.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

BANK OF NEW YORK MELLON,	:	
Plaintiff-Appellee,	:	CASE NO. CA2014-04-096
	:	O P I N I O N
- vs -		5/26/2015
	:	
MELISSA A. KURZNER, et al.,	:	
Defendants-Appellants.	:	

CIVIL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CV2010-07-3004

Edward A. Proctor, 1300 East Ninth Street, Cleveland, Ohio 44114, for plaintiff-appellee

Scott A. Hoberg, 9146 Cincinnati-Columbus Road, West Chester, Ohio 45069, for defendants-appellants, Melissa A. and Daniel W. Kurzner

RINGLAND, J.

{¶ 1} Defendants-appellants, Daniel and Melissa Kurzner ("the Kurzners"), appeal from a decision of the Butler County Court of Common Pleas denying their motion for relief from judgment from a default judgment and entry of decree of foreclosure granted in favor of plaintiff-appellee, The Bank of New York Mellon f.k.a. The Bank of New York as Successor Trustee to JP Morgan Chase Bank, as Trustee for certificate holders of Bear Stearns Asset Backed Securities, Inc. Asset Backed Certificates, Series 2003-SD1 ("BNY Mellon").

{¶ 2} On July 20, 2010, BNY Mellon filed a complaint in foreclosure against the Kurzners. The Kurzners did not file an answer to the complaint. On August 25, 2010, BNY Mellon filed a motion for default judgment and an affidavit in support of that motion. The trial court granted judgment in favor of BNY Mellon on September 2, 2010.

{¶ 3} On October 24, 2011, the Kurzners filed a motion for relief from judgment based on BNY Mellon's alleged lack of standing. On February 14, 2014, a magistrate's decision was issued denying the Kurzners' motion. The Kurzners objected to the magistrate's decision, and the trial court held a hearing on the objection. On March 31, 2014, the trial court adopted the magistrate's decision denying the Kurzners' motion for relief from judgment.

{¶ 4} The Kurzners now appeal that decision, raising a single assignment of error for review.

{¶ 5} Assignment of Error No. 1:

{¶ 6} IN A FORECLOSURE CASE, THE TRIAL COURT ERRED IN DENYING DEFENDANT'S MOTION FOR RELIEF FROM JUDGMENT WHEN PLAINTIFF FAILED TO ESTABLISH STANDING AT THE COMMENCEMENT OF THE ACTION.

{¶ 7} Within this assignment of error, the Kurzners argue that, (1) "[w]here Ohio law requires the Plaintiff to have standing before it commences an action, [BNY Mellon] lacked standing because it failed to provide an enforceable promissory note at the time of filing the complaint," (2) "[w]here Ohio law requires the Plaintiff to have standing before it commences an action, [BNY Mellon] lacked standing because it failed to provide a recorded mortgage assignment at the filing of the complaint," and (3) "[w]here Ohio law requires the Plaintiff to have standing before it commences an action, [BNY Mellon] lacked standing because it lacked standing under both the note and mortgage."

{¶ 8} In *Bank of Am., N.A. v. Kuchta*, 141 Ohio St.3d 75, 2014-Ohio-4275, ¶ 19, the

Supreme Court found that so long as "a court possesses subject-matter jurisdiction, any error in the invocation or exercise of jurisdiction over a particular case causes a judgment to be voidable rather than void." Because foreclosures are squarely within the subject-matter jurisdiction of a court of common pleas, a trial court's erroneous exercise of jurisdiction over a foreclosure proceeding in which a party lacks standing causes its judgment to be voidable, not void. *Id*. Therefore, while a party's lack of standing can be challenged in the course of the foreclosure proceedings themselves or on direct appeal of the judgment, standing cannot be used to collaterally attack the judgment. *Id*. at ¶ 23-25.

{¶ 9} In the present case, the Kurzners are challenging BNY Mellon's standing by collaterally attacking the judgment through their Civ.R. 60(B) motion for relief. The Ohio Supreme Court in *Kuchta* expressly forbade such a challenge to a party's standing, and this court has relied on *Kuchta* in holding the same. *Buckner v. Washington Mut. Bank*, 12th Dist. Butler No. CA2014-01-012, 2014-Ohio-5189, ¶ 38. Thus, the trial court did not err in denying the Kurzners' Civ.R. 60(B) motion for relief.

{¶ 10} Accordingly, the Kurzners' sole assignment of error is overruled.

{¶ 11} Judgment affirmed.

S. POWELL, P.J., and HENDRICKSON, J., concur.