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Statement of why this Case is of Great Public or General Interest  
that Involves a Substantial Constitutional Question  
and loss of contractual rights of Defendants/Appellants

In a Journal Entry and Opinion, released August 6th, 2009 and journalized August 25th, 2009 the Eighth Districe Court of Appeals upheld the Common Pleas Court decision for Deutsche Bank National Trust Co. (hereafter Deutsche). The Common Pleas Court and Appellate Court both lost their way along the path of cases and facts cited by Deutsche.

This case is a house foreclosure case which makes it of great public or general interest as of October of 2009. Patricia Ann Ingle Et Al., Appellants known hereafter as Ingle and/or Brdar, never received service of key case documents at the Common Pleas Court level. Thereby denying Appellant(s) procedural due process rights afforded by the U.S. Constitution.

Deutsche claims to have acquired interest in the subject property trust. Deutsche has no statuatory agent for service of process in Ohio and its alleged lien on the subject property is numbered after the second mortgage of Appellant Brdar. Deutsche is granted all sorts of rights not asked for in its pleadings.

Brdar's second mortgage rights are inexplicably truncated at the Common Pleas Court level. Deutsche had no reason to sue Appellant Brdar in foreclosure. Brdar holds a second mortgage on the subject property and Brdar owes nothing on the first mortgage.

The Common Pleas Court Magistrate's boss' wife showed up as a lawyer for Deutsche.

The county appraisal system in Cuyahoga County which appraises foreclosures is currently being examined by federal officials. One of the Cuyahoga County appraiser's was indicted for corruption and made a plea deal.

In reaching its conclusion, the Common Pleas Court and the Eighth District Court failed to appreciate the constitutional right of procedural due process.

Procedural due process must be observed. Those safeguards to one's liberty and property mandated by the 14th Amendment to the U.S. Constitution such as the right to counsel appointed for one who is indigent, the right to a copy of a transcript, the right of confrontation; all of which are specifically provided for in the 6th Amendment to the U.S. Constitution and made applicable to the states' procedure by the 14th Amendment to the U.S. Constitution.

Central meaning of procedural due process is that parties whose rights are to be affected are entitled to be heard and, in order that they may enjoy that right, they must be notified. Parham v. Cortese, 407 U.S. 67, 92 S.Ct. 1983, 1994, 32 L.ED2d 556. Reasonable notice and opportunity to be heard and present any claim of defense are embodied in the term "procedural due process." In re Nelson, 78 N.M. 739, 437 P.2d 1008. The fundamental misunderstanding of the holdings and misapplication of the legal principals by both the Common Pleas Court and the Appeals Court have operated to leave anyone living in the Eighth District without clearly defined property rights.

Appellants urge, indeed beg that this Court will accept this Appeal to once and for all clarify the status of Ohio's property laws and their interaction with due process, trustee law, real estate lien filing, contract law, and appraisal law.

#### Statement of the Case, Facts, and Introduction

Original Defendant, Patricia Ann Ingle, applied for a home loan with First Franklin. They kept changing the terms from fixed low interest rate loans approximately four times to an interest only variable rate loan with balloon payments.

Finally, frustrated, Patricia Ann Ingle, agreed to the loan. Patricia Ann Ingle, hereafter Ingle, believes she was duped into a poorly structured subprime loan by a predatory lender.

Said loan looks to have been sold to an investor represented by Deutsche Bank National Trust Company, hereafter Deutsche. In Ingle's opinion, Deutsche is also a predatory lender.

Ingle never dealt directly/originally with Deutsche. Deutsche has a Pennsylvania address in the original Complaint. Ingle is not aware of a statutory agent for service of process for Deutsche since Deutsche is a foreign corporation.

Deutsche recorded its assignment of rights to Ingle's mortgage on April 29th, 2008 as instrument number 200804290382 in the Cuyahoga County Recorder's Office. This means Deutsche had no standing to sue Ingle on April 10th, 2008. Further, this may mean that original Defendant Robert A. Brdar's, hereafter Brdar, second mortgage lien may now take precedence over Deutsche's. Brdar's lien was recorded in March of 2006 and is numbered 200603030888.

Deutsche sued Ingle for foreclosure on April 10th, 2008. Deutsche also sued second mortgage holder Robert A Brdar and Nick Brdar. A previous Quit Claim Deed had given all of Nick Brdar's rights to Robert A. Brdar. Nick Brdar was an unnecessary party to the lawsuit.

Ingle and Brdar filed an Answer/Counterclaim/Motion To Dismiss in response to Deutsche's original Complaint.

Brdar and Ingle's Motion To Dismiss was denied July 9th, 2008, after Deutsche replied to Ingle and Brdar's Answer, Counterclaim, and Motion To Dismiss.

On July 25th, 2008 Deutsche filed a Motion For Default Judgment and a

Motion For Summary Judgment. Neither Ingle or Brdar received these Motion(s). That said, Ingle or Brdar did not know to respond to Deutsche's Motion For Default Judgment and Motion For Summary Judgment.

Brdar received a Notice of Hearing on a Motion For Default Judgment filed by Deutsche. Deutsche set up the hearing. Brdar brought Ingle with him to the hearing. Deutsche never showed up. At that point Ingle and Brdar's Answer and Counterclaim should have been granted and Deutsche's Complaint dismissed. The date was September 3rd, 2008 not September 4th, 2008 as the record states.

On September 3rd, 2008, Attorney Susan Mandryk, the wife of presiding Magistrate Timothy M. Gauntner's boss requested that she be allowed to sit in as counsel for Deutsche. Susan Mandryk was not Deutsche's attorney of record. Brdar and Ingle objected to Ms.Mandryk's use as attorney for Deutsche.

After said objection(s), the September 3rd, 2008 hearing was ended.

Brdar got a notice of another Motion For Default hearing on October 1st, 2008. Brdar informed Ingle. Ingle filed for continuance but was denied.

The reason Ingle was given for her Motion For Continuance being denied was that the Parties who answered the Pleading(s) did not become subject to a Motion For Default Judgment. Why were Ingle and Brdar summoned to said hearing(s)?

Ingle and Brdar attended Deutsche's second Motion For Default hearing. No issues of fact, law, or material issues were resolved. Deutsche learned that Nick Brdar should not be part of the case. Brdar and Ingle informed the Magistrate that there was a problem with service and Brdar and Ingle were not receiving relevant case material. The Magistrate ordered Ingle's address of service to be 27811 Knickerbocker Road, Bay Village, Ohio 44140. An address of 6809 Temple Avenue, Cleveland, Ohio 44127 was not to be used.

Ingle and Brdar were waiting for Deutsche's next move when Brdar received notice of the granting of a Motion For Summary Judgment filed by Deutsche on July 25th, 2008 that neither Brdar or Ingle knew anything about. Neither Brdar or Ingle ever received notice that said Motion For Summary Judgment had ever been filed.

Then came the Magistrate's Decision which only Brdar received a copy of. Ingle and Brdar objected. Deutsche replied.

The Magistrate's Decision tries to obliterate all of Ingle's and Brdar's rights. This includes rights protected by Ohio law and the U.S. Constitution. Brdar, for example, was a second lien holder and not a borrower. Said decision for Deutsche bestows rights on/to Deutsche that it never asked for in any of its' filings.

Ingle and Brdar objected to the Magistrate's decision for Deutsche. Judgment was for Deutsche.

Ingle and Brdar appealed to the Eighth District Court of Appeals. Judgment was for Deutsche.

Ingle and Brdar objected to the eighth district courts judgment for Deutsche. Judgment again was wrongfully for Deutache. One notice was sent, in error, to the wrong address. This, after the Parties argued in front of the appeals court about notices being sent to the wrong address. The proper address was 27811 Knickerbocker Road, Bay Village, Ohio 44140 not 6809 Temple Avenue, Cleveland, Ohio 44127. See Appendice C.

Ingle and Brdar are appealing to this Honorable Surpreme Court for justice and fairness.

In addition, Deutsche throughout its' filings consistantly makes conclusory statements supported by no facts and no evidence. Ingle and Brdar, on the other hand, do not. Also, Ingle and Brdar state with particularity

all grounds for objection(s) consistently, in keeping with Civ.R. 53(D)(3)(b)(ii).

Deutsche's Motion For Default under Rule 56 of the Ohio Rules of Civil Procedure was improper from the get go. The Magistrate, in his denial of Ingle's September 17th, 2008 Motion For A Continuance of the second Motion For Default Judgment, concurred. The case Appearance Docket states in pertinent part that motion of Defendant Patricia Ann Ingle to continue the default hearing is denied as said Defendant has filed an Answer and therefore, the Motion For Default Judgment filed (by Deutsche) does not pertain to said Defendant (Patricia Ann Ingle).

Deutsche had no standing to sue Ingle and/or Brdar. Deutsche admits to filing a lien April 29th, 2008 but suing Ingle and Brdar April 10th, 2008 before said April 29th, 2008 filing. Deutsche tries to skirt the issue by quoting trustee law. The fact is, Brdar's lien was filed on 27811 Knickerbocker Road, Bay Village, Ohio 44140 before Deutsche's lien was filed.

Deutsche claims that under Civ.R. 17(A) of the Ohio Rules of Civil Procedure time is given to file a lien such as its in such cases. Given that real estate is involved here, this is bad law or it should be.

Further, when seeking summary judgment on the ground(s) that the non-moving party cannot prove its' case, the movant bears the initial burden of informing the court of the basis for the motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact in the essential element(s) of the nonmoving party's claim. Vahila v. Hall (1997), 77 Ohio St. 3d 421, 429; Dresher v. Burt (1996), 75 Ohio St.3d 280, 293; Mitseff v. Wheeler (1988), 38 Ohio St.3d 112. Deutsche, the movant, never met its' burden.

Deutsche keeps putting forth Affidavit(s) from its' employees as proof of what it says. These Affidavit(s) of Deutsche are self serving. None of

Deutsche's employees were part of any transaction between the initial lender First Franklin and Ingle and Brdar. Therefore, said Affidavit(s) should be construed to be hearsay until proven otherwise in open court. Ingle and Brdar did not have a chance to question said employees in court or otherwise.

#### Law and Discussion

Appellants should of been granted the relief they prayed for in their original answer and counterclaim at the trial court level and/or the appellate court level.

#### A. RELEVANT STATUTES

The pertinent portions of the provisions of the Ohio Revised Code are:

R.C. 1703.01 through 1703.31 in real estate transactions

The 6th and 14th Amendments to the U.S. Constitution

#### B. LEGAL FRAMEWORK AND THE EIGHTH DISTRICT INGLE ET AL DECISION

Assignment to Deutsche Bank of the subject matter mortgage occurred on March 1, 2008. A complaint for foreclosure was filed on April 10th, 2008. The assignment was recorded on April 29th, 2008.

Foreclosure complaints should only be allowed to be filed on real estate if assignments of the mortgage are recorded. Appellants didn't even know who Deutsche Bank was when they received the original complaint.

Letting Deutsche Bank sue Appellant(s) before any assignment to them was filed is ludicrous. Appellant(s) could not of sued Deutsche Bank because they had no idea who they were before April 29th, 2008. The common pleas courts legal interpretation was that this was okay pursuant to Everhome Mortgage Co. vs Rowland Franklin App.No.07AP-615,2008-Ohio-1982. Said case law should be changed or struck down. You should have to record your assignment of rights to a mortgage before you can file a complaint on them.

Next, the Appellate Court in its' Opinion No. 092487 (this case) said Ingle got service on Appellees Motion For Summary Judgment when she didn't.

The presumption of service of Deutsche Bank's Motion For Summary Judgment was rebutted by testimony before the common pleas court Magistrate Timothy M. Gauntner by Ingle on or about October 1st, 2008. Said magistrate ordered all service to be on Ingle at 27811 Knickerbocker Road, Bay Village, Ohio 44140 (dated October 2nd, 2008 on the Appearance Docket).

Appellant(s) were denied procedural due process when Deutsche was granted judgment never having served Appellant(s) with Deutsche's Motion For Summary Judgment.

Those safeguards to one's liberty and property mandated by the 14th Amendment to the U.S. Constitution, such as the right to counsel appointed for one who is indigent, the right to a copy of a transcript, the right of confrontation; all of which are specifically provided for in the 6th Amendment to the U.S. Constitution and made applicable to the states' procedure by the 14th Amendment to the U.S. Constitution.

Central meaning of procedural due process is that parties whose rights are to be affected are entitled to be heard and, in order that they may enjoy that right, they must be notified. Parham V. Cortese, 407 U.S. 67,92 S.Ct. 1983,1994,32 L.Ed.2d 556. Reasonable notice and opportunity to be heard and present any claim or defense are embodied in the term "procedural due process." In re Nelson, 78 N.M. 739, 437 P.2d 1008.

Deutsche Bank should be required to comply with the licensing requirements as stated in Ohio R.C. 1703.01 through R.C. 1703.31 in real estate transactions. [See Ohio R.C. 1703.29].

Letting Deutsche slide on the requirements of Ohio R.C. 1703.01 through R.C. 1703.31 needs to be revised in real estate transactions. At times alleged trustees like Deutsche can sue people such as Appellant(s) but Appellant(s) have no statutory agent for Deutsch listed. Said trustees have a wall

of immunity built around them. Why?

Further, Deutsche was granted all kinds of special orders in the Magistrate's Decision that Deutsche never asked for in any filed document.

Appellant Brdar's second mortgage rights were truncated in the Magistrate's Decision with no legal basis. Brdar was on the scene far before Deutsche.

#### Conclusion

All of the above is included herein, as if fully rewritten herein.

Appellant(s) never got their day in court. Brdar's rights were inexplicably truncated. Deutsche was granted all sorts of orders not asked for. Deutsche has no statutory agent for service of process. Deutsche is skirting Ohio real estate law by alleging to be a trustee. Appellant(s) were denied due process. Several important assignments of error cited by Appellant(s) were never addressed at the common pleas level and the appellate court level. The wife of a court employee, not listed as counsel on the case file, tried to represent Deutsche.

Appellant(s) further believe that former Cuyahoga county house appraisers have been indicted and plead guilty recently to corruption charges leaving a cloud of suspicion over said counties foreclosures and appraisals.

WHEREFORE, Appellant(s) prays that this honorable court accept jurisdiction over these discretionary issues, review all issues presented and entertain oral arguments (unless waived by the parties). Upon doing so, this court should overrule the Common Pleas Court's and the Eighth District Court's decision(s). Appellant(s) pray that all of their remedies sought previously in common pleas court and appeals court be granted them or a new trial be granted Appellant(s). Said remedies to include court costs and attorney(s)' fees, if any, for all proceedings. That along with all other remedies available in law and/or equity.

Respectfully submitted,

Patricia Ann Ingle  
PATRICIA ANN INGLE  
Appellant

27811 Knickerbocker Road  
Bay Village, Ohio 44140  
Tel: 1-(216) 316-0344

Robert A. Brdar  
ROBERT A. BRDAR  
Appellant

P.O. Box 32177  
Euclid, Ohio 44132-0177  
Tel: 1-(216) 394-2633

PROOF OF SERVICE

I hereby certify that a copy of this Memorandum In Support Of Jurisdiction was sent via regular U.S, Mail to M. Elizabeth Hils, Lerner Sampson & Rothfuss, LPA., 120 East Fourth Street, Suite 800, Cincinnati, Ohio on October 8th, 2009. M. Elizabeth Hils is Appellees counsel.

Patricia Ann Ingle  
PATRICIA ANN INGLE  
Appellant

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Tel: 1-(216) 316-0344

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P.O. Box 32177  
Euclid, Ohio 44132-0177  
Tel: 1-(216) 394-2633

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 92487

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**DEUTSCHE BANK NATIONAL TRUST COMPANY**

PLAINTIFF-APPELLEE

vs.

**PATRICIA ANN INGLE, ET AL.**

DEFENDANTS-APPELLANTS

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**JUDGMENT:  
AFFIRMED**

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Civil Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CV-656449

**BEFORE:** Gallagher, P.J., Sweeney, J., and Jones, J.

**RELEASED:** August 6, 2009

**JOURNALIZED:** AUG 25 2009

APPENDICE A & B

VOL 688 #0794

**FOR APPELLANTS**

Patricia Ann Ingle, pro se  
27811 Knickerbocker Road  
Bay Village, Ohio 44140

Robert A. Brdar, pro se  
P.O. Box 32177  
Euclid, Ohio 44132-0177

**ATTORNEYS FOR APPELLEE**

April A. Brown  
P. O. Box 5480  
Cincinnati, Ohio 45201

Romi T. Fox  
M. Elizabeth Hils  
Lerner, Sampson & Rothfuss  
120 East Fourth Street, 8th Floor  
Cincinnati, Ohio 45202

**FILED AND JOURNALIZED  
PER APP. R. 22(E)**

**AUG 25 2009**

GERALD E. FUERST  
CLERK OF THE COURT OF APPEALS  
BY *[Signature]* DEP.

**ANNOUNCEMENT OF DECISION  
PER APP. R. 22(B), 22(D) AND 26(A)  
RECEIVED**

**AUG 6 - 2009**

GERALD E. FUERST  
CLERK OF THE COURT OF APPEALS  
BY *[Signature]* DEP.

CA08092487



58979808

N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

**NOTICE MAILED TO COUNSEL  
FOR ALL PARTIES-COSTS TAXED**

SEAN C. GALLAGHER, P.J.:

Defendants-appellants, Patricia Ann Ingle and Robert A. Brdar, appeal the judgment of the Cuyahoga County Court of Common Pleas that granted monetary relief as well as a decree of foreclosure to plaintiff-appellee, Deutsche Bank National Trust Co. ("Deutsche Bank").<sup>1</sup> Appellants also challenge certain ancillary rulings. For the reasons stated herein, we affirm.

On March 3, 2006, Ingle obtained a purchase money mortgage loan from First Franklin, a division of National City Bank of Indiana ("First Franklin"). In consideration thereof, Ingle executed an adjustable rate note in the amount of \$80,000. She granted the mortgage to Mortgage Electronic Registration System, Inc., d.b.a. MERS, as a nominee for First Franklin. The mortgage was recorded on March 3, 2006. The mortgage was the first lien, after the statutory lien for real estate taxes, upon property located at 27811 Knickerbocker Road, Bay Village, Ohio.

The note was endorsed twice beneath Ingle's signature. The first endorsement was by First Franklin to First Franklin Financial Corporation, and the second by First Franklin Corporation in blank. The note was subsequently transferred and sold to Deutsche Bank by the blank endorsement and delivery, and by allonge, by First Franklin.

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<sup>1</sup> Nick Brdar, a defendant in the action, is not a party to the appeal.

On March 1, 2008, MERS, as nominee for First Franklin, executed an assignment of the mortgage to Deutsche Bank. The assignment conveyed the mortgage as well as "all moneys now owing or that may hereafter become due or owing in Respect thereof[.]" Thereafter, the assignment was recorded on April 29, 2008.

Following the assignment itself, Deutsche Bank filed a complaint in foreclosure on April 10, 2008, against Ingle, Robert Brdar a.k.a. Robert Allen Brdar, and Nick Brdar. The complaint alleged that Ingle was in default under the terms of the note and the mortgage, and claimed a balance due and owing from Ingle in the amount of \$79,639.89, plus interest at the rate of 9.25 percent per annum from December 1, 2007, plus court costs, advances, and other charges. Robert Brdar and Nick Brdar were named in the complaint by virtue of their interest in the property as shown in the preliminary judicial report. The report reflected a second mortgage in the amount of \$20,000 to Robert Brdar and Nick Brdar, which was recorded on March 3, 2006.

The record reflects that service was perfected upon all defendants. Ingle and Robert Brdar filed a joint answer, motion to dismiss, and counterclaim. The motion to dismiss and counterclaim were opposed by Deutsche Bank. The trial court denied the motion to dismiss and later rendered judgment for Deutsche Bank on the counterclaim.

Deutsche Bank filed a motion for default judgment with respect to those defendants who had not entered an appearance in the case. In response, Nick Brdar filed a letter disclaiming any interest in the property.

Deutsche Bank filed a motion for summary judgment and two supporting affidavits. Deutsche Bank also filed a notice of filing note and allonge of note.

The first supporting affidavit was of Daniel Richard, Assistant Vice President of Home Loan Services, Inc., a servicing agent for Deutsche Bank. He declared that Deutsche Bank was the holder of the note and mortgage that are the subject of this action. He further declared that the note was in default and that Deutsche Bank had elected to accelerate the entire balance due and owing in the amount of \$79,639.89. The second supporting affidavit was of April A. Brown, counsel for Deutsche Bank. She declared that Deutsche Bank was the holder of the note and mortgage, and she also authenticated a recorded assignment of the mortgage.

None of the defendants filed opposition briefs, affidavits, or other evidence in response to Deutsche Bank's motions.

A hearing was held on the motion for default judgment before a court magistrate on October 1, 2008. On that date, Deutsche Bank filed an affidavit as to interest rate, establishing that the interest rate on the note remained

unchanged. The court magistrate issued an order granting default judgment to Deutsche Bank against all defaulting parties.

On October 3, 2008, the magistrate issued a decision granting summary judgment in favor of Deutsche Bank and against Ingle on the note in the sum of \$79,639.89, plus interest at the rate of 9.25 percent per annum from December 1, 2007. The magistrate further declared that the conditions of the mortgage had been broken, thereby entitling Deutsche Bank to foreclose on its lien.

Ingle and Robert Brdar filed objections to the magistrate's decision that were overruled by the trial court. The trial court adopted the magistrate's decision and granted judgment for Deutsche Bank against Ingle and issued a decree of foreclosure.

Appellants filed this appeal, raising 16 assignments of error for review. Several of the assignments of error contain no argument and merely cross-reference other assignments of error; several reiterate arguments already raised under the first assignment of error; and several contain nothing more than conclusory assertions. Further, appellants do not cite any evidence, case law, or relevant portions of the record. We may disregard those assignments of error that fail to comply with the appellate rules. See App.R. 12(A)(2). Accordingly, we decline to address assignments of error 2-9, 11, and 13-15. See Appendix. We shall proceed to address the remaining assignments of error.

Appellants first assignment of error provides as follows: "1. [Appellants] should [have] been granted judgment on their answer(s), counterclaim(s) and accompanying motion(s) to dismiss [Deutsche Bank's] case."

Appellants raise several arguments under this assignment of error.

First, they claim that Deutsche Bank is a Pennsylvania Corporation and never established standing to sue in Ohio. Our review reflects that Deutsche Bank National Trust Company filed this action acting as a trustee of a securitized loan. Deutsche Bank was not required to comply with the licensing requirements as stated in R.C. 1703.01 through R.C. 1703.31. See *Citibank, NA v. Eckmeyer*, Portage App. No. 2008-P-0069, 2009-Ohio-2435.

Second, appellants argue that Deutsche Bank lacked standing to bring the action on April 10, 2008. The real party in interest in a foreclosure action is the current holder of the note and mortgage. *Everhome Mtge. Co. v. Rowland*, Franklin App. No. 07AP-615, 2008-Ohio-1282. Although Deutsche Bank did not record the assignment of rights to the mortgage until after the complaint was filed, the record shows that the mortgage was assigned to Deutsche Bank on March 1, 2008. Deutsche Bank also filed an allonge of the note, as well as affidavits verifying that it was the holder of the note and mortgage. Accordingly,

Deutsche Bank was the real party in interest at the time the lawsuit was filed.<sup>2</sup>

Third, appellants state that Nick Brdar was an unnecessary party to the lawsuit. Nick Brdar is not a party to this appeal, and appellants have no standing to raise this issue on his behalf. Further, insofar as misjoinder is alleged, Civ.R. 21 clearly states that "misjoinder of parties is not ground for dismissal of an action."

Fourth, appellants argue that Deutsche Bank failed to appear for the default hearing and that the attorney who appeared on its behalf was not the attorney of record. Our review shows that the first default hearing of which appellants are complaining was continued. Thus, any error caused by the appearance of substitute counsel for Deutsche Bank was harmless. Further, insofar as the motion for default judgment did not pertain to appellants, they lack standing to raise any issues pertaining thereto.

Fifth, appellants claim that Robert Brdar's second mortgage should have been given priority over Deutsche Bank's lien. Appellants argue that Robert Brdar's second mortgage should take precedence because Deutsche Bank did not

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<sup>2</sup> This case is distinguishable from *Wells Fargo Bank, N.A. v. Jordon*, Cuyahoga App. No. 91675, 2009-Ohio-1092, relied upon by appellants at oral argument. In that case, the mortgage was not assigned to Wells Fargo Bank until after the complaint was filed; therefore, Wells Fargo Bank was not a real party in interest on the date the action was brought against Jordon. Here, the mortgage, albeit not yet filed, was assigned to Deutsche Bank before the lawsuit was filed, making Deutsche Bank the real party in interest.

file the assignment of rights to the mortgage until April 29, 2008. However, Deutsche Bank obtained its interest in the note and the mortgage by assignment. As an assignee of the note and mortgage, Deutsche Bank stood in the place of its assignor and succeeded to all the rights and remedies of the latter. See *EMC Mtge. Corp. v. Jenkins*, 164 Ohio App.3d 240, 250, 2005-Ohio-5799; *Homecomings Financial Network v. Oliver*, Hamilton App. No. C-020625, 2003-Ohio-2668. Accordingly, Deutsche Bank's lien was superior in priority to the second mortgage of Robert Brdar.

Sixth, appellants argue that they never received Deutsche Bank's motion for default judgment or its motion for summary judgment. They also state that they never received the magistrate's decision. They apparently claim that service was sent to an address other than the address of the subject property, which was ordered to be the address of record at the time of the default hearing. Both of Deutsche Bank's motions, which were filed prior to the default hearing, contain an attached certificate of service indicating service was made on all parties or their counsel of record by regular U.S. mail. "A presumption of proper service exists when the record reflects that the Civil Rules pertaining to service of process have been followed. This presumption may only be rebutted by producing sufficient evidence, such as an affidavit, that the responding party never received service." (Internal citations and quotations omitted.) *JPMorgan*

*Chase Bank v. Ritchey*, Lake App. No. 2006-L-247, 2007-Ohio-4225. Appellants never presented any evidence that they failed to actually receive service of the motions. With respect to the magistrate's decision, the record reflects that the clerk's office issued notice of the decision. Also, appellants filed objections to the decision. Accordingly, from the record before us, proper service can be presumed to have occurred.

Finally, appellants make conclusory assertions that Deutsche Bank failed to prove its case, that the complaint should have been dismissed, and that judgment should have been granted to appellants on their counterclaim.<sup>3</sup> We decline to address such unsupported claims.

Appellants' first assignment of error is overruled.

Appellants' tenth, twelfth, and sixteenth assignments of error challenge the trial court's decision to grant summary judgment in favor of Deutsche Bank. The assigned errors provide as follows:

"10. [Appellants] never got a chance to have their issues of material fact and accompanying law heard."

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<sup>3</sup> The counterclaim made the broad assertions that the complaint was "wrongfully, purposely, and fraudulently filed" and that appellants had "endured great emotional pain, stress, and embarrassment and hardship."

“12. Because [appellants] never got their day in court, the fact that [Deutsche Bank’s] mortgage involved fraud in the inducement was not properly addressed.”

“16. The findings in the magistrate’s decision were incorrect and improper, and said findings were improperly used against [appellants]. \* \* \*”<sup>4</sup>

Under these assignments of error, appellants complain that an oral hearing was not conducted with respect to the material issues in the case, that they were not permitted to respond to the motion, and that judgment should not have been granted against them.

This court reviews a trial court’s grant of summary judgment de novo. *Ekstrom v. Cuyahoga Cty. Community College*, 150 Ohio App.3d 169, 2002-Ohio-6228. Before summary judgment may be granted, a court must determine that “(1) no genuine issue as to any material fact remains to be litigated, (2) the moving party is entitled to judgment as a matter of law, and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing the evidence most strongly in favor of the nonmoving party, that conclusion is adverse to the nonmoving party.” *State ex rel. Dussell v. Lakewood Police Dept.*, 99 Ohio St.3d 299, 300-301, 2003-Ohio-3652, citing

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<sup>4</sup> The sixteenth assignment of error also challenges service of the magistrate’s decision. This argument was addressed under the first assignment of error.

*State ex rel. Duganitz v. Ohio Adult Parole Auth.*, 77 Ohio St.3d 190, 191, 1996-Ohio-326. The moving party carries an initial burden of setting forth specific facts that demonstrate his or her entitlement to summary judgment. *Dresher v. Burt*, 75 Ohio St.3d 280, 292-293, 1996-Ohio-107. If the movant meets this burden, summary judgment will be appropriate if the nonmovant fails to establish the existence of a genuine issue of material fact. *Id.* at 293.

Generally, an oral hearing is not required on a motion for summary judgment. See *Hooten v. Safe Auto Ins. Co.*, 100 Ohio St.3d 8, 2003-Ohio-4829. Further, a trial court need not notify the parties of the date of consideration of a motion for summary judgment or the deadlines for submitting briefs and Civ.R. 56 materials if a local rule of court provides sufficient notice of the hearing date or submission deadlines. *Id.* at 17.

In this case, the record does not reflect that any party requested an oral hearing on the motion for summary judgment. Pursuant to Loc.R. 11(I) of the Cuyahoga County Common Pleas Court, the court could hear the matter on the briefs and accompanying evidentiary materials without oral argument. Further, the rule provides adequate notice of the submission deadlines for summary judgment motions and opposition briefs.

Deutsche Bank's motion for summary judgment was filed on July 25, 2008. Deutsche Bank supported the motion with affidavits showing that it was the

holder of the note and a valid first mortgage on the property, that the mortgage was in default and the debt had been accelerated, and that there was a balance of \$79,639.89 due and owing with interest thereon. Appellants never filed a brief in opposition to the motion, and despite making appearances in court, they never requested an extension of time to file an opposition brief. Further, they never provided any evidence in opposition to establish the existence of any material issues of fact. See Civ.R. 56. Also, they offered no proof of their affirmative defenses or counterclaim. Accordingly, Deutsche Bank was entitled to judgment as a matter of law.

Appellants' tenth, twelfth, and sixteenth assignments of error are overruled.

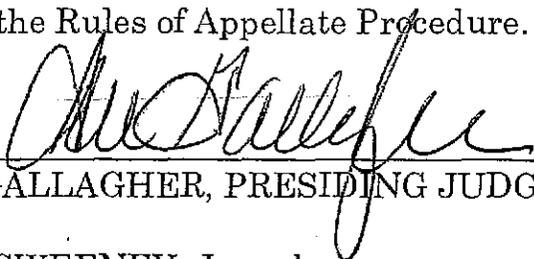
Judgment affirmed.

It is ordered that appellee recover from appellants costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to  
Rule 27 of the Rules of Appellate Procedure.



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SEAN C. GALLAGHER, PRESIDING JUDGE

JAMES J. SWEENEY, J., and  
LARRY A. JONES, J., CONCUR

## APPENDIX

The assignments of error we decline to address pursuant to App.R. 12(A)(2) include the following:

"2. [Appellants] and Nick Brdar were improperly joined as defendants. A quit claim deed had given all of Nick Brdar's rights to Robert A. Brdar. Nick Brdar was an unnecessary party to the lawsuit."

"3. [Deutsche Bank] and the court improperly interpreted the use of judicial process and procedure. \* \* \* [Deutsche Bank] had no standing to sue Ingle on April 10, 2008. \* \* \*"

"4. [Deutsche Bank] used wrong or improper application of statutory and case law."

"5. [Deutsche Bank] and/or the court improperly denied [Robert Brdar's] and/or Ingle's right(s), title(s) and interest(s) in the property \* \* \*"

"6. [Deutsche Bank] made improper service on [appellants]. \* \* \*"

"7. [Deutsche Bank] and the court were both involved with improper motion resolution. \* \* \*"

"8. [Deutsche Bank] never showed up for their first default hearing but attorney Susan Mandryk did. \* \* \* [Deutsche Bank] improperly used counsel."

"9. Material issues and/or facts were not addressed or decided properly by the court. [Appellants] never got [Deutsche Bank's] motion for summary judgment. Therefore, [appellants] could not timely answer said motion. Ingle

never received the magistrate's decision. [Deutsche Bank's] memorandum in support of [its] reply in support of the magistrate's decision was not legally correct and should be null and void. [Appellants] never got their day in court."

"11. [Appellants] had liens fully or partially questioned/denied."

"13. [Deutsche Bank] had no viable case."

"14. No evidence was allowed to be presented by [appellants]."

"15. No sale of 27811 Knickerbocker should be granted."



CASE: CV-08-656449

739027

DEUTSCHE BANK NATIONAL TRUST CO.

VS.

PATRICIA ANN INGLE ET AL

First-Class Mail  
U. S. Postage Paid  
Cleveland, OH  
Permit No. 1962

JUDGE: JOHN J RUSSO

ROOM: 17A JUSTICE CENTER

DOCKET DATE: 08/31/2009

\*\*\*\*CA\*\*\*\*\* JUDGMENT: AFFIRMED. OSJ. NOTICE  
ISSUED.

**FROM:**

CUYAHOGA COUNTY - COURT OF COMMON PLEAS  
GERALD E. FURST - CLERK OF COURTS  
JUSTICE CENTER - COURT TOWER  
1200 ONTARIO ST  
CLEVELAND, OH 44113

**TO:**

PATRICIA ANN INGLE  
6809 TEMPLE AVENUE  
CLEVELAND, OH 44127



APPENDICE C