

**IN THE SUPREME COURT OF OHIO**

U.S. BANK, NATIONAL ASSOCIATION,	)	CASE NO. 2011-0218
	)	
Plaintiff-Appellant,	)	On Appeal from Cuyahoga County Court of
	)	Appeals, Eighth Appellate District
vs.	)	
	)	Court of Appeals
ANTOINE DUVALL, et al.,	)	Case No. CA-10-094714
	)	
Defendants-Appellees.	)	
	)	

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**MEMORANDUM REGARDING NOTICE OF  
SUGGESTION OF MOOTNESS**

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**FILED**  
AUG 12 2011  
CLERK OF COURT  
SUPREME COURT OF OHIO

## I. INTRODUCTION

On August 4, 2011, appellees, Antoine Duvall and Madinah S. Samad (the “Duvalls”), filed a “Notice of Suggestion of Mootness,” bringing to the Court’s attention the fact that U.S. Bank National Association (“U.S. Bank”), as Trustee for CMLTI 2007-WFHE2, released the mortgage securing the property in this case. The Duvalls suggest that as to them, this release moots the issues in this case and, without a justiciable issue, this Court should dismiss the action.

The Duvalls are correct that U.S. Bank released the mortgage, and that this dispute between the parties is presently moot. Given the importance of the questions presented, that does not end the analysis.

In certified conflicts cases, the Court may proceed to resolve the conflict, even if the case from which certification has been granted is itself moot. Therefore, the Court can proceed to decide this case on its merits.

Alternatively, the Court has already accepted jurisdiction and stayed briefing in another case which presents the identical issues here, *U.S. Bank v. Perry*, Case No. 11-0170.

Accordingly, the Court could dismiss this case and activate briefing in *Perry*.

In addition, in *Federal Home Loan Mortgage Corp. v. Schwartzwald*, Case Nos. 11-1201 and 11-1362, the Second District has certified to this Court a virtually identical question to that certified by the Eighth District. *Schwartzwald* is awaiting this Court’s determination on jurisdiction and whether to accept the certified conflict.<sup>1</sup> The Court could therefore dismiss this certified conflict and address the same issue in *Schwartzwald*.

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<sup>1</sup> Counsel for U.S. Bank in this case also represents U.S. Bank in the *Perry* case and Federal Home Loan Mortgage Corporation in the *Schwartzwald* case.

## II. DISCUSSION

This case is before the Court on a certified conflict concerning the following question: “To have standing as a plaintiff in a mortgage foreclosure action, must a party show that it owned the note and the mortgage when the complaint was filed?” Entry, April 6, 2011. On June 8, 2011, U.S. Bank filed a certificate of release of the mortgage securing the Duvalls’ property, reflecting that it has been paid and discharged, thus mooted this question in this case.

Contrary to the Notice of Suggestion of Mootness, that does not necessarily resolve this case. Even when a certified conflict case is rendered moot by subsequent action, if “a matter of great general interest remains” and other cases are held in abeyance pending the original case, the Court “may proceed to resolve the issue in this case.” *State v. Massien*, 125 Ohio St.3d 204, 2010-Ohio-1864, 926 N.E.2d 1282, ¶ 4; citing *Franchise Developers, Inc. v. Cincinnati* (1987), 30 Ohio St.3d 28, 31, 505 N.E.2d 966.

That is precisely the scenario here. The question certified by the Eighth District presents itself again in *Perry*. The Court has stayed *Perry* pending its decision in this case. The Court could therefore reach the merits of the certified conflict in this case. *Massien, supra*.

Alternatively, the Court has already accepted jurisdiction in *Perry*. The Court could simply decide the issue in that case.

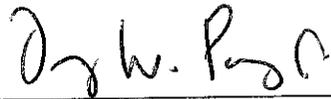
Finally, the importance of this question (and the propriety of the certification of the question in this case) is reflected by *Schwartzwald*. The Second District recognized the split on these issues, and has again certified its decision as in conflict with *Duvall*.

~~Accordingly, there are three separate paths in which the Court may clarify Ohio law on these important issues.~~

**III. CONCLUSION**

This specific case is presently moot. However, the issues in this case remain pending in another case already accepted by the Court, and with another certified conflict case awaiting this Court's review. The Court is by no means required to dismiss this case, but if it chooses to do so, it may confront these important issues in either *Perry* or *Schwartzwald*.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I certify that on August 11, 2011, I served a copy of the foregoing by regular U.S. mail,

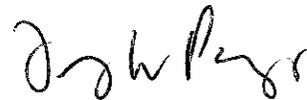
postage prepaid, upon:

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