ORIGINAL

IN THE SUPREME COURT OF OHIO

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,	:	
	:	Case No.: 2012-1028
Plaintiff/Appellee,	:	
	:	(On Appeal From the Court of Appeals of Ohio, Eighth Appellate District, County of Cuyahoga, Case No. CA-11-97315)
v.	:	
JAMES M. UNGER, et al.,	:	
	:	
Defendants/Appellants.	:	

APPELLEE'S MEMORANDUM IN RESPONSE TO MEMORANDUM IN SUPPORT OF JURISDICTION

Jeffrey A. Lipps (0005541)
(Counsel of Record)
David A. Wallace (0031356)
Joel E. Sechler (0076320)
CARPENTER LIPPS & LELAND LLP
280 Plaza, Suite 1300
280 North High Street
Columbus, Ohio 43215
Telephone: (614) 365-4100
Facsimile: (614) 365-9145
lipps@carpenterlipps.com
wallace@carpenterlipps.com
sechler@carpenterlipps.com

Attorneys For Plaintiff-Appellee
The Bank of New York Mellon Trust Company, N.A.

James R. Douglass (0022085)
(Counsel of Record)
JAMES R. DOUGLASS CO. LPA
20521 Chagrin Blvd., Suite D
Shaker Heights, Ohio 44122
Telephone: (216) 991-7640
Facsimile: (216) 991-7641
firedcoach@aol.com

Attorney for Defendants-Appellants
James M. Unger and Kelly B. Unger

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I. STATEMENT OF APPELLEE'S POSITION REGARDING WHY THIS IS *NOT* A CASE OF PUBLIC OR GREAT GENERAL INTEREST.

The proposition of law presented for review is not of great public or general interest. The decision below by the Eighth District Court of Appeals is based on a straightforward application of longstanding Ohio law that an individual must suffer an "injury in fact" in order to have standing to sue. This simple legal proposition applies to quiet title actions, and to any other statutory or common law claim recognized in Ohio. The Eighth District, in a thoughtful, unanimous, and well-reasoned 21-page opinion, concluded that Appellants James and Kelly Unger ("Appellants") did not suffer an "injury in fact" through the assignments of a valid and consensual mortgage, and thus Appellants lacked standing to sue.

The main thrust of Appellants' argument is that the Eighth District misconstrued constitutional standing and statutory standing in reaching its decision. The Eighth District made no such mistake, however, and in fact properly applied the law. In Ohio, a party must actually suffer an injury in order to seek recovery before an Ohio court. Whether that injury is subject to redress through the common law, a statute, or both, first and foremost, there must first be an injury in fact. Simply because a statute (in this case, the quiet title statute) provides a potentially available cause of action to a property owner does not relieve that property owner from first establishing that he or she has, in fact, suffered an injury. The Eighth District thus correctly applied Ohio standing law. The correct application of law is certainly not a matter of public or great general interest. In addition, although not specifically addressed by the Eighth District, the decision also fully comports with equally long-standing Ohio law that a party may not assert contractual rights and remedies under a contract to which it is neither a party nor a third-party beneficiary.

The Eighth District's decision also does not threaten the existence of homeownership in Ohio, or "emasculate" a primary means for homeowners to contest adverse claims to ownership of their homes. Homeowners still have all the rights and available remedies they have always had to counter actual improper claims to and/or liens on their property. The Eighth District's decision does not affect a homeowner's legitimate rights and defenses in foreclosure actions. The foreclosing lender must still establish its right to enforce the note and/or mortgage signed by the homeowner. The homeowner can still assert available defenses and/or counterclaims, including assertions of improprieties in loan origination and other recognized, legitimate claims and defenses relating to loan origination, loan servicing, and payment processing, among others. All the Eighth District decision did was reaffirm that the homeowner must have standing to assert any available defenses and/or counterclaims. In its decision below, the Eighth District simply held that that mortgagors, like the Ungers, lack standing to attack the assignment of a consensual mortgage from the original lender to subsequent assignees because no injury flows from the assignment itself.

The decision of the Eighth District is also consistent with the only other Ohio court of appeals to address this issue, and is in line with other jurisdictions across the country that have addressed the question of whether an assignment of a consensual mortgage can cause injury to a borrower. Courts have consistently and resoundingly held that borrowers suffer no injury, and thus do not have standing to sue. As a result, there is nothing about the Eighth District's decision that requires correction or otherwise creates an issue that this Court needs to address.

The Eighth District reached the correct decision under Ohio law on an issue that is straightforward and uncontroversial. There is nothing of public or great general interest about

the requirement that a party suffer injury in order to have standing to sue. Thus, there is no basis for granting a discretionary appeal in the Ohio Supreme Court.

II. APPELLEE'S STATEMENT OF THE CASE.

There is nothing "unusual" about the real factual and procedural background of this case, which started as a foreclosure action filed by Appellee The Bank of New York Mellon Trust Company, N.A. ("BONY") in 2009 after Appellants defaulted on their promissory note and mortgage. On August 9, 2004, Appellant James Unger signed a promissory note payable to the originating lender, SouthStar Funding, LLC ("SouthStar"). Also on August 9, 2004, both Appellants signed a mortgage securing the obligation to repay the SouthStar loan. Appellants do not dispute that they signed the promissory note and mortgage, and do not dispute that the mortgage was properly recorded on August 10, 2004. Appellants also do not contest that they have been in default under the promissory note and mortgage for over five years.

The promissory note now contains two allonges. The first allonge was indorsed by SouthStar in blank. The promissory note containing the first allonge was negotiated to Residential Funding Corporation ("RFC"). RFC then stamped its name on the original SouthStar blank indorsement, making the indorsement a special indorsement with RFC as the holder. RFC then negotiated the Note to JP Morgan Chase Bank, as Trustee ("JP Morgan"), by making a separate indorsement to JP Morgan on the first allonge. A second allonge was then affixed to the promissory note containing the first allonge and indorsed by JP Morgan by special indorsement to the current holder, BONY. The transfer and negotiation of the promissory note is in complete compliance with Ohio law.

The mortgage history is even more straightforward. The mortgage provided that SouthStar was the lender and that Mortgage Electronic Registration Systems, Inc. ("MERS") was

the mortgagee as nominee for SouthStar. The mortgage further provided authority to MERS, as nominee, to perform certain acts relating to the mortgage, including making assignments of the mortgage. On May 31, 2007, MERS assigned the mortgage to "The Bank of New York as successor in interest to JP Morgan Chase Bank, as Trustee" (the "2007 Assignment of Mortgage"). The 2007 Assignment of Mortgage was recorded with the Cuyahoga County Recorder's Office on June 5, 2007. The mortgage was then assigned by "The Bank of New York as successor in interest to JP Morgan Chase Bank, as Trustee" to BONY by an Assignment of Mortgage executed on October 19, 2009 (the "2009 Assignment of Mortgage"). The 2009 Assignment of Mortgage was recorded with the Cuyahoga County Recorder's Office on October 28, 2009. The assignments of the mortgage are also in complete compliance with Ohio law.

Appellants stopped making payments under the promissory note and mortgage, and the first foreclosure case was filed on May 29, 2007 by "Bank of New York," the holder of Appellants' promissory note and mortgage at that time. When the second foreclosure was filed on November 30, 2009, "Bank of New York" had merged with Mellon Financial Corporation to form BONY. The 2009 Assignment of Mortgage was executed and recorded confirming this name change as a result of the merger. There thus was a simple and obvious answer to the question "why the identity of the Plaintiff and alleged holder of the note and owner of the mortgage changed between the filing of the first foreclosure complaint and the case *sub judice*," notwithstanding Appellants' attempt to create mystery and intrigue. This case does not present the situation where competing lenders are attempting to enforce the same promissory note, and there is nothing notable about the fact that two foreclosure cases were filed.

Appellants presented no Rule 56 evidence in the trial court demonstrating that there was <u>anything</u> improper about the execution of either of the assignments of mortgage. The

assignments simply transferred the right enforce the mortgage Appellants admit they agreed to have placed as a lien on their property as security for a loan they admit they failed to repay. The sole evidence they attempted to present was stricken by the trial court, and the Eighth District upheld this ruling.

Based on these facts—which are established by the Rule 56 evidence in the case, as opposed to Appellants' innuendo and unsupported accusations of "robo-signing" and "fraud"—the Eighth District correctly determined that Appellants do not have standing to assert a quiet title claim against BONY. There is no reason for this Court to accept discretionary jurisdiction to reconsider the Eighth District's well-reasoned decision, which properly applied Ohio law.

III. ARGUMENT IN OPPOSITION TO PROPOSITION OF LAW.

A. Response To Proposition of Law No. 1: The Mere Existence Of Ohio's Quiet Title Statute Does Not Dispense With The Long-Held Requirement That Appellants Must First Establish Standing To Sue Under That Statute.

The law of Ohio is clear: to have standing to assert a common law or statutory claim, the party must "demonstrate an injury in fact." See In re Estate of York, 133 Ohio App. 3d 234, 241, 727 N.E.2d 607 (12th Dist. 1999)(citing Eng. Technicians Assn. v. Ohio Dept. of Transp, 72 Ohio App. 3d 106, 110-11, 593 N.E.2d 472 (10th Dist. 1991)). "An injury in fact requires a showing that the party has suffered or will suffer a specific injury, that the injury is traceable to the challenged action, and that it is likely that the injury will be redressed by a favorable decision." Id. Ohio's standard for establishing standing is nearly identical to its federal counterpart, and Ohio courts routinely follow standing decisions adopted by federal courts. See Brinkman v. Miami Univ. 12th Dist. No. CA2006-12-313, 2007-Ohio-4372 (Aug. 27, 2007).

Moreover, Ohio courts recognize a "general prohibition on a litigant's raising of another person's legal rights." See Save the Lake Assn v. City of Hillsboro, 158 Ohio App. 3d 318,

2004-Ohio-4522, 321 815 N.E.2d 706 (4th Dist. 2004). This Court has consistently held that "a litigant must assert its own rights, not the claims of third parties." See Ohio Apartment Assn v. Levin, 127 Ohio St. 3d 76, 83, 2010-Ohio-4414, 936 N.E.2d 919 (2010). Thus, this Court has also held that "[o]nly a party to a contract or an intended third-party beneficiary of a contract may bring an action on a contract in Ohio." See Thornton v. Windsor House, Inc., 57 Ohio St. 3d 158, 161, 565 N.E. 2d 1220 (1991).

There is no legal or factual basis to overturn the Eighth District's decision. The Eighth District correctly determined that Appellants lacked standing to pursue a quiet title claim against BONY under Ohio law.

1. Appellants Suffered No "Injury In Fact" Based On The Assignments Of Mortgage.

Appellants argue that the Eighth District misapplied Ohio law because the mere existence of Ohio's quiet title statute somehow automatically dispenses with the prerequisite that Appellants first establish standing to sue. Appellants cite no Ohio authority (or any authority from any other jurisdiction) supporting this contention. There is none. Rather, as the Eighth District correctly held, any party must first "demonstrate an injury in fact" before they may assert a quiet title claim. See Court of Appeals Decision ("COA") at ¶ 27 (citing Wilmington City School Dist. Bd. of Edn. v. Bd. of Commrs. of Clinton Co, 141 Ohio App. 3d 232, 238, 750 N.E.2d 1141 (12th Dist. 2000)) and Eng.Technicians Assn v. Ohio Dept. of Transp., 72 Ohio App. 3d 106, 110-111, 593 N.E.2d 472 (10th Dist. 1991)) There is no exception to this longstanding rule for quiet title actions.

As the Eighth District correctly found, the failure to satisfy Ohio's standing requirement, which applies equally to statutory and common law claims, prevents Appellants from asserting a quiet title claim related to the assignments of mortgage, because the assignments of mortgage

have not caused (and cannot cause) Appellants a traceable injury in fact that a court could redress. See COA at ¶¶ 35. The assignments of mortgage simply transfer the right to foreclose Appellants' mortgage to satisfy the unpaid obligation under the promissory note. The assignments of mortgage do not change any obligations of Appellants under the mortgage or the promissory note, and do not change the conditions that caused their default. Rather, as the Eighth District held:

> [BONY] filed the foreclosure complaint based on the Ungers' default under the note and mortgage, not because of the mortgage assignments. The Ungers' default exposed them to foreclosure regardless of the party who actually proceeds with foreclosure. The Ungers, therefore, failed to show they suffered or will suffer any injury, the injury is traceable to the mortgage assignments, and it is likely a favorable decision will remedy the injury.

Id. Simply put, at most, any "injury in fact" suffered by Appellants is the loss of their home to foreclosure. However, as the Eighth District concluded, that "injury in fact" is due to Appellants' default under the promissory note and mortgage (both of which Appellants voluntarily signed), and not due to the assignments themselves. Thus, Appellants' "injury in fact" had nothing to do with whether or not their mortgage was subsequently assigned, or to whom it was assigned. Appellants face foreclosure due to their own failure to honor their obligations under the note and mortgage, not as a result of the assignments of their mortgage.

Moreover, the party that would suffer any injury due to a fraudulent assignment of mortgage would be the owner of the mortgage—either the mortgagee or the true assignee. This is because the improper assignment would affect the true owner's rights under the mortgage, not the rights of the breaching homeowner. Thus, for this additional reason, the Eighth District properly found that the assignments of mortgage have not caused, and cannot cause, a specific, traceable injury to Appellants capable of redress by a court.

The Eighth District did not apply federal standing requirements in reaching its decision. Rather, the Eighth District expressly applied Ohio's long-held definition of "injury in fact," which "requires a showing that the party has suffered or will suffer a specific injury, that the injury is traceable to the challenged action, and that it is likely that the injury will be redressed by a favorable decision." See COA at ¶ 27. The Court of Appeals simply relied on Bridge v. Aames Capital Corp., N.D. Ohio No. 1:09-CV-2947, 2010 U.S. Dist. Lexis 103154 (Sept. 28, 2010) as "supportive authority." See COA at ¶ 35. This is completely appropriate, because Ohio courts "have routinely followed standing doctrines developed in federal court," since the standards are nearly identical. Brinkman, 12th Dist. No. CA2006-12-313, 2007-Ohio-4372 (quoting Solimine, Recalibrating Justiciability in Ohio Courts, 51 Clev.St.L.Rev. 531,536 (2004)).

In Bridge, the borrower (Bridge) filed an action seeking a declaratory judgment and to quiet title, claiming that the assignment of her mortgage from the originating lender (Aames) to Deutsche Bank was somehow defectively executed, thus preventing Deutsche Bank from foreclosing on her property. Id. at **3-5. As the Eighth District noted, Bridge brought essentially the same claim as Appellants do here. Although Judge Oliver in Bridge applied the federal standing requirements, they are nearly identical to Ohio's:

> To satisfy Article III's standing requirement, a plaintiff must have [1] suffered some actual or threatened injury due to the alleged illegal conduct of the defendant; [2] the injury must be 'fairly traceable' to the challenged action; and [3] there must be a substantial likelihood that the relief requested will redress or prevent plaintiff's injury.

Id. at *6. Judge Oliver granted Deutsche Bank's Motion to Dismiss based upon Ms. Bridge lacking standing to challenge the assignment of mortgage, holding that:

> Courts have routinely found that a debtor may not challenge an assignment between an assignor and assignee...The underlying contract is between Debtor and Assignor. Assignor's assignment contract is between Assignor and Assignee. The two contracts are completely separate from one another. As a result of the assignment of the contract, Debtor's rights and duties under the underlying contract remain the same: the only change is to whom those duties are owed....Debtor was not a party to the assignment, nor has a cognizable interest in it. Therefore, Debtor has no right to step into Assignor's shoes to raise its contract rights against Assignee. Debtor has no more right than a complete stranger to raise Assignor's rights under the assignment contract.

Id. at *9. Judge Oliver persuasively described Ms. Bridge (like the Appellants in this case) as being wholly "uninvolved and unaffected" by the assignment of mortgage because, whether the original lender or its assignee is the current mortgage holder of record "makes no difference with respect to the obligations owed by [the borrower] under the mortgage contract." Id. at **11-12.

The Eighth District's decision is correct for another reason: Ohio's "injury in fact" requirement prevents Appellants from asserting claims related to the assignments of mortgage because Appellants are not parties to the assignments of mortgage. Although the Eight District did not need to reach the issue in its decision, Ohio courts recognize a "general prohibition on a litigant's raising of another person's legal rights." See Save the Lake Assn v. City of Hillsboro, 158 Ohio App. 3d 318, 321, 2004-Ohio-4522, 815 N.E.2d 706 (4th Dist. 2004). This Court has consistently held that "a litigant must assert its own rights, not the claims of third parties." See Ohio Apartment Assn v. Levin, 127 Ohio St. 3d 76, 83, 2010-Ohio-4414, 936 N.E. 2d 919 (2010). Thus, this Court has also held that "[o]nly a party to a contract or an intended third-party beneficiary of a contract may bring an action on a contract in Ohio." See Thornton v. Windsor House, Inc., 57 Ohio St. 3d 158, 161, 565 N.E. 2d 1220 (1991). Under this standard, Appellants lack standing to challenge the assignments of mortgage, because the assignments of mortgage only transfer the contract rights set forth in the mortgage from SouthStar ultimately to BONY, a

transfer to which Appellants are not parties. Appellants also do not claim they are third-party beneficiaries of the assignments of mortgage. Appellants simply have no legally recognizable interest in the assignments of mortgage, and thus cannot establish requisite Ohio standing.

The Ohio Third District Court of Appeals' decision in Chase Home Fin. v. Heft, 3rd Dist. No. 8-10-14; 8-11-16, 2012-Ohio-876 (Mar. 5, 2012), reached this same conclusion. In Heft, the borrower (Heft) filed a Rule 60(B) motion seeking relief from a foreclosure judgment, claiming the assignment of his mortgage had been "robo-signed." Id. at ¶ 35. The Third District affirmed the trial court's denial of Heft's Rule 60(B) motion, holding that "since Heft was not a party to the assignment of mortgage, he lacks standing to challenge its validity; and therefore, the assignment's validity cannot serve Heft as a meritorious defense or claim for purposes of his Civ. R. 60(B) motion." Id. at ¶ 37. Like Appellants in this case, Heft did not deny entering into the underlying note and mortgage, or deny his default under the note and mortgage. Id. at ¶ 36.

In a curious twist (given Appellants' incorrect accusation that the Eighth District relied on federal standing law in reaching its decision), Appellants rely on two federal district court cases interpreting Michigan law, not Ohio law, governing quiet title actions. Although lacking any precedential value, these cases actually support the Eighth District's decision in this case, and do not help Appellants.

In Shumake, like the Appellants in this case, the defaulting borrower brought a quiet title action against his mortgage lender, Deutsche Bank, alleging the assignment of mortgage to Deutsche Bank was somehow fraudulent, and thus Deutsche Bank could not enforce the mortgage. See Shumake v. Deutsche Bank National Trust Co., W.D. Mich. No. 1:11-CV-353, 2012 U.S. Dist. Lexis 12950 at *3 (Feb. 2, 2012). The Shumake court dismissed the borrower's quiet title action based on lack of federal standing, but noted that it could also have dismissed the

borrower's claim based on lack of standing under Michigan law. Id. at *10. Applying federal standing law, which is similar to Ohio's, the court held the borrower failed to establish an injury "fairly traceable" to the assignments of mortgage, because:

> Whether Shumake made his mortgage payments on time had nothing to do with whether Chase validly assigned the mortgage to Deutsche Bank. Either way, Shumake still had to make the same payments – the assignment only altered *to whom* he made the payments; the assignment had no other consequences to Shumake...Moreover, this Court would not be able to redress Shumake's injury. Even if the assignment were invalid, Chase would have retained the right to foreclose upon the property. That is, had the assignment been invalid, Chase could have taken the same action as that of Deutsche Bank. Shumake does not allege otherwise.

Id. at *9. As such, the case Appellants cite as the centerpiece of their argument involves claims essentially identical to Appellants, where the court reached the exact same conclusion the Eighth District reached in this case: a borrower has no standing to assert a quiet title claim based upon an assignment of mortgage (under federal or state law). Id. Far from coming to Appellants' aid, Shumake serves only to highlight the complete lack of support for Appellants' position.

The Talton case likewise serves only to reinforce that Appellants' position is wrong. In Talton, the borrowers alleged the assignment of their mortgage might be invalid if the individual who signed it did not possess the required power of attorney. See Talton v. BAC Home Loans Serv. LP, E.D. Mich. No. 11-14512, 2012 U.S. Dist. Lexis 36216 at *25-*25 (Mar. 7, 2012). Like Appellants in this case, the borrowers in Talton speculated that the person who signed the assignment of mortgage might have lacked authority to do so. Id. The district court dismissed the borrowers' complaint, because the borrowers alleged only "hypothetical theorizing" and presented "no pleaded facts back up the plaintiffs' theorizing." Id. at *25. Similarly in this case,

Appellants have not and cannot provide any evidence, other than their own wild speculation, that the assignments of mortgage were invalid in any way.

The Talton court did suggest in dicta (since there were no competing ownership claims in Talton) that a borrower may have standing under Michigan law to challenge an assignment of mortgage where two lenders claim to own the same underlying promissory note and/or mortgage. Id. But as the Eighth District specifically pointed out in its decision, there are no competing claims of ownership to Appellants' promissory note and mortgage in this case, and thus no threat that Appellants will have to "pay twice" on their promissory note. See COA at ¶ 38. Although Appellants work hard to create competing claims, there is no evidence whatsoever of any entity, other than BONY, seeking enforcement of the Appellants' promissory note and foreclosure of Appellants' mortgage.

Simply put, Appellants have not cited a single case anywhere in the country adopting their position. In fact, other courts (in Ohio and elsewhere) that have addressed this issue have held that borrowers, such as Appellants, lack standing to bring quiet title claims or otherwise challenge assignments of mortgages. See, e.g., Livonia Property Holdings v. Farmington Road Holdings, 6th Cir. No. 10-1782, 2010 U.S. App. Lexis 22764 (Oct. 28, 2010); Rogan v. Bank One, National Association, 457 F.3d 561 (6th Cir. 2006); Turner v. Lerner Sampson & Rothfuss, N.D. Ohio No. 1:11-CV-0056, 2011 U.S. Dist. Lexis 41364 at *4-5 (Apr. 11, 2011); Fryzel v. MERS, D.R.I. No. CA 10-352 M, 2011 U.S. Dist. Lexis 95114 at *44 (June 10, 2011); In re MERS, D. Ariz. No. 09-2119, 2011 U.S. Dist. Lexis 117107 at *42-43 (Oct. 3, 2011); Pua v. Reconstruct Co., C.D. Cal. No. CV 11-1801, 2011 U.S. Dist. Lexis 82624 at *10-11 (July 28, 2011); Ifert v. Miller, 138 B.R. 159, 166 (E.D. Pa. 1992). This, the Eighth District decision is in line with the other courts across the country that have addressed this issue.

In sum, the Eighth District correctly held, as other courts have, that Appellants lack standing to challenge the assignments of their consensual mortgage, as the assignments have not caused them any injury in fact. Appellants thus cannot assert a quiet title claim based upon the execution or validity of the assignments of mortgage.

2. The Assignments Of Mortgage Are Not A "Cloud On Title" Or "Adverse Interest."

Appellants also contend that the assignments of mortgage constitute an "adverse interest" and a "cloud on title" on their property that a quiet title action may extinguish. Section 5303.01 of the Ohio Revised Code, to which Appellants cite for support for their standing to quiet title, permits a claim to be brought by "a person in possession of real property, by himself or tenant, against any person who claims an interest therein adverse to him, for the purpose of determining such adverse interest." See Ohio Rev. Code § 5303.01. As Appellants point out, in Ohio, the referenced "adverse interest" is often referred to as a "cloud on title," defined as "a title or incumbrance, apparently valid, but in fact invalid." See Novogroder v. DiPaola, 11 Ohio App. 374, 378 (8th Dist. 1919). The assignments of mortgage are not interests adverse to the Appellants and are not a cloud on their title, however.

The assignments of mortgage are simply a transfer of the rights contained in the underlying mortgage. As such, the assignments of mortgage could only constitute an interest adverse to Appellants, or "cloud" their title, if the underlying mortgage is an adverse interest or a "cloud on title." Appellants do not dispute that the mortgage is valid and is in fact a consensual lien on their property, to which Appellants agreed as security for repayment of the loan. COA at ¶ 37. Appellants do not dispute that they both signed the mortgage, and Mr. Unger admitted he signed the underlying promissory note and was thus obligated to repay the money he borrowed. Appellants further admitted that the mortgage was properly recorded with the Cuyahoga County Recorder's Office.

Appellants also do not contend the mortgage has been satisfied by full payment on the promissory note, but rather concede they are years in default. As such, as the Eighth District held, "the mortgage is not a 'cloud' on Appellants' title, and neither are the mortgage assignments." See COA at ¶ 37.

Appellants cite several old Ohio cases for the proposition that a defectively executed mortgage is a cloud on the title subject to a quiet title action. None support Appellants' position, however, or make a case for this Court accepting appellate jurisdiction. The Ohio Supreme Court cases on which Appellants rely, Erwin v. Shuey, 8 Ohio St. 509 (1858); Mayham v. Coombs, 14 Ohio 848 (1848); and Langmeade v. Weaver, 65 Ohio St. 17, 60 N.E. 992 (1901), all simply stand for the noncontroversial rule that priority of liens and/or leases is determined by the date they are recorded, not by when they are executed. These case are simply inapplicable here, as Appellants do not dispute that the underlying mortgage was properly recorded and is a first lien on their property. The discussion in these cases regarding Ohio's previous "two witness" requirement for mortgages and leases is also of no moment to this case.

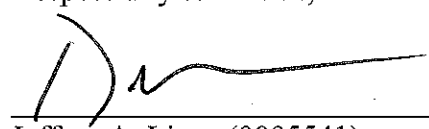
Appellants' allegations of fraud or other improprieties in connection with the assignments do not change this conclusion. There is no Rule 56 evidence supporting these allegations. And, any impropriety in the assignments does not alter the fact that the mortgage itself is valid in any event.

Appellants cite no statute or case law that holds that a consensual lien, agreed to by the property owners, could somehow constitute a cloud on an owner's title or otherwise be an interest adverse to the owner. There is no such authority and this position is nonsensical on its face. Accordingly, Appellants do not possess standing to bring a quiet title premised on the assignments of mortgage, because the assignments of mortgage, as a matter of law, are not interests adverse to, or a cloud on, Appellants' title.

IV. CONCLUSION.

For all of the reasons stated here, BONY respectfully submits that this Court should decline to accept discretionary jurisdiction over this matter. The proposition of law presented by Appellants for review in this Court is simply not one of great public or general interest, and the Ohio law at issue was correctly applied by the Eighth District.

Respectfully submitted,



Jeffrey A. Lipps (0005541)
(Counsel of Record)
David A. Wallace (0031356)
Joel E. Sechler (0076320)
CARPENTER LIPPS & LELAND LLP
280 Plaza, Suite 1300
280 North High Street
Columbus, Ohio 43215
(614) 365-4100 (Telephone)
(614) 365-9145 (Facsimile)
lipps@carpenterlipps.com
wallace@carpenterlipps.com
sechler@carpenterlipps.com

Attorneys for Plaintiff-Appellee
The Bank of New York Mellon
Trust Company, N.A.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Appellee's Memorandum in Response to Memorandum in Support of Jurisdiction was served on July 16, 2012 by first-class U.S. Mail, postage prepaid, upon:

James R. Douglass
James R. Douglass Co. LPA
20521 Chagrin Blvd., Suite D
Shaker Heights, Ohio 44122

Benjamin N. Hoen
323 W. Lakeside Avenue, Suite 200
Cleveland, Ohio 44113

Evana Carolyn Delon
55 Public Square, Suite 700
Cleveland, Ohio 44113

Lindsey K. McCarron
150 East Gay Street, 21st Floor
Columbus, Ohio 43215

James R. Bennett
400 United States Courthouse
801 W. Superior Avenue
Cleveland, Ohio 44113row Road
Stow, Ohio 44224

One of the Attorneys for Plaintiff-Appellee
The Bank of New York Mellon Trust Company, N.A.

096:1148:319653