ORIGINAL

IN THE SUPREME COURT OF OHIO

JOHN RANKIN,	:	**CASE NO. 2012-1187**
Appellant,	:	
vs.	:	**On Appeal from the Pickaway County Court of Appeals, Fourth Appellate District**
FIFTH THIRD MORTGAGE COMPANY,	:	**Court of Appeals Case No. 11 CA 0008**
Appellee.	:	

MEMORANDUM OF APPELLEE FIFTH THIRD MORTGAGE COMPANY IN RESPONSE TO MEMORANDUM IN SUPPORT OF JURISDICTION

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NO SUBSTANTIAL CONSTITUIONAL QUESTION IS INVOLVED, AND THIS IS NOT A CASE OF PUBLIC OR GREAT GENERAL INTEREST

Although appellant attempts to characterize the issues in this case as questions of due process, this is not a case that raises a substantial constitutional question, nor is it a case of public or great general interest. As the opinion of the Fourth District Court of Appeals makes clear, the issues below were questions of statutory construction, and the Court of Appeals was able to resolve them by applying well-established precedent. See Fifth Third Mortgage Co. v. Rankin, 4th Dist. No. 11CA8, 2012-Ohio-2806. The case involves no questions of law, novel or otherwise, that might be of public or great general interest, and the Fourth District's opinion does not conflict with the opinions of any sister appellate courts. In short, there are no constitutional or public-interest reasons for the Court to accept jurisdiction.

APPELLEE'S POSITION REGARDING APPELLANT'S PROPOSITIONS OF LAW

Appellant's Proposition of Law No. I: Strict Adherence to the Statues (sic) Is Required

The court of appeals properly disposed of this issue. While R.C. 2329.27(B)(1) says that foreclosure sales made without compliance with the notice requirements of R.C. 2329.26(A)(1)(a) "shall be set aside, on motion by any interested party," the Court of Appeals correctly noted that the rule is subject to R.C. 2329.26(B)(2) and (3). Rankin, supra., ¶23. The Court went on to note that R.C. 2329.27(B)(3), "regarding the effect of a confirmation order, expressly contemplates that a trial court may confirm a sale despite the lack of strict compliance[.]" Id. After further analysis, the Court of Appeals correctly stated that the relevant statutes clearly allowed a trial court to exercise its discretion to confirm a sale where, as in this case, no prejudice resulted from a lack of strict compliance with the statutory notice requirements. Id. There is no need for this Court to revisit that issue.

Appellant's Proposition of Law No. II: Complete Service is Required on All Parties

The Court of Appeals correctly determined that strict compliance with statutory notice provisions was not required and also correctly determined that appellant suffered no prejudice as

the result of a lack of strict compliance. Id., ¶¶13, 15, 19-24. Appellant's Proposition of Law No. II is, in this case, without merit.

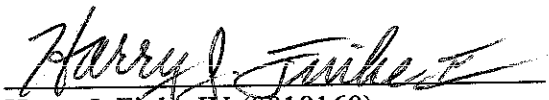
Appellant's Proposition of Law No. III: Strict Adherence is Required to Protect All Parties

Appellant's third proposition of law is simply a slight variation on the two discussed above, except that appellant cites Rak-Ree Enterprises, Inc. v. Timmons, 101 Ohio App. 3d 12, 654 N.E.2d 1310 (Pickaway Cty. 1995), another case decided by the Fourth District. However, as the Court of Appeals correctly pointed out, Rak-Ree is "distinguishable, both on its facts and because a different statutory provision was at issue." Rankin, supra., ¶21. See also id., ¶22 (discussing differences in the two cases). Appellant's Proposition of Law No. III is also without merit.

CONCLUSION

Appellant offers no compelling reason why this Court should review the decision below. Appellee Fifth Third Mortgage Company respectfully requests, therefore, that the Court decline to exercise jurisdiction.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was sent by Regular U.S. Mail, postage prepaid, to Mr. John Rankin, 8120 State Route 138, Williamsport, OH 43164, this 7th day of August, 2012.

Harry J. Finke IV

Harry J. Finke IV

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