

IN THE SUPREME COURT OF OHIO

CITIMORTGAGE, INC., : **CASE NO. 2013-0128**
: **Plaintiff-Appellee,** :
: **On Appeal from the Cuyahoga County**
vs. : **Court of Appeals, Eighth Appellate**
: **District**
DAVID L. PATTERSON, : **Court of Appeals Case No. CA-12-98360**
: **Defendant-Appellant.** :

**MEMORANDUM OF APPELLEE CITIMORTGAGE, INC.
IN RESPONSE TO APPELLANT'S MEMORANDUM
IN SUPPORT OF JURISDICTION**

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

This is not a case that raises a substantial constitutional question, nor is it a case of public or great general interest. Appellant is simply asking this Court to reconsider the language and logic of its recent decision in *Fed. Home Loan Mortg. Corp. v. Schwartzwald*, 134 Ohio St. 3d 13, 2012-Ohio-5017, 979 N.E.2d 1214, ¶ 28. As the opinion of the Eighth District Court of Appeals makes clear, the issues below involved the application of Ohio Civil Rule 17(A), and the Eighth District was able to resolve these issues by applying this Court's plain language and logic in *Schwartzwald. CitiMortgage, Inc. v. Patterson*, 8th Dist. No. 98360, 2012-Ohio-5894, --- N.E.2d ----. This case involves no questions of law, novel or otherwise, that might be of public or great general interest, and the Eighth District's opinion is reaffirmed by its sister appellate court. *Fed. Home Loan Mortg. Corp. v. Rufo*, 11th Dist. No. 2012-A-0011, 2012-Ohio-5930, ---N.E.2d ----. In short, there are no constitutional or public-interest reasons for the Court to accept jurisdiction.

STATEMENT OF THE CASE AND FACTS

This is a foreclosure action which CitiMortgage, Inc. ("CitiMortgage") filed against Defendants. The case arises from Defendants' default on a promissory note ("Note") indorsed in blank and a mortgage ("Mortgage") upon Defendants' Property ("Property"). CitiMortgage filed a Complaint in Foreclosure on September 20, 2006 ("Complaint"), where it correctly alleged that it was the holder of the Note. After numerous delays stemming from Defendants' bankruptcy proceedings and Defendants' objections to the foreclosure, the trial court eventually granted CitiMortgage's Motion for Default Judgment and the property was sold at Sheriff's Sale.

On March 5, 2012, the Trial Court held a hearing on Defendants' Motion to Vacate Judgment, which had been filed before the Sheriff's Sale. On April 19, 2012 the trial court granted the Motion to Vacate, noting:

Upon review of the file, the motion for relief from judgment, and Plaintiff's brief in opposition thereto, and pursuant to precedent (*Wells Fargo Bank, N.A. v. Jordan*, 8th Dist. No. 91675, 2009-Ohio-1092), the motion for relief from judgment of Mr. and Mrs. Patterson is granted. Plaintiff filed the instant action on 09/20/2006, and attached copies of the Note and Mortgage upon which the case was based. Unfortunately for Plaintiff, however, the evidence provided indicates that the Mortgage was not assigned to Plaintiff CitiMortgage, Inc. until 10/13/2006, after the case was filed. Plaintiff, therefore, has not provided sufficient evidence of standing as required by *Wells Fargo v. Jordan*. As a consequence, the sheriff's sale held 10/03/2011 is hereby vacated; the judgment rendered 09/11/2008 is also vacated; and the case is dismissed, without prejudice final.

CitiMortgage filed a timely Notice of Appeal. The Eighth District overturned the trial court's decision to grant Defendants' motion for relief from judgment. The court relied upon the ruling in *Schwartzwald*, where this Court held that a foreclosing plaintiff need only establish "an interest in the note *or* mortgage" at the time of filing the complaint to have standing to invoke the jurisdiction of the court. *CitiMortgage, Inc. v. Patterson* at ¶¶ 21, 22 (emphasis added). The *Patterson* court's decision overruled the Eighth District's prior holding in *Wells Fargo Bank, N.A. v. Jordan*, 8th Dist. No. 91675, 2009-Ohio-1092; where the court held that a foreclosing plaintiff had standing to foreclose only if it could establish an interest in both the note *and* mortgage at the time of filing the complaint. In this case, the Eighth District found that CitiMortgage was the holder of the Note at the time it filed the Complaint and thus, under *Schwartzwald*, it had standing to invoke the court's jurisdiction. *CitiMortgage, Inc. v. Patterson* at ¶¶ 21, 22

APPELLEE'S POSITION REGARDING APPELLANT'S PROPOSITIONS OF LAW

Appellant's Proposition of Law No. I

A Plaintiff that files a complaint in foreclosure without an assignment of mortgage attached to the complaint lacks standing to foreclose because an assignment of the mortgage is an interest in land and must be in writing to comply with the Statute of Frauds, R.C. 1335.04.

The court of appeals properly disposed of this issue, finding that CitiMortgage had standing at the time it filed the Complaint. It correctly interpreted the plain language and logic of *Schwartzwald*; which held that, to have standing to invoke jurisdiction of the court, a foreclosing

plaintiff must establish “an interest in the note *or* mortgage” when filing a complaint. *Fed. Home Loan Mortg. Corp. v. Schwartzwald*, 134 Ohio St. 3d at ¶ 28. (emphasis added) The Eighth District noted this Court’s “use of the disjunctive word ‘or’ as opposed to the conjunctive word ‘and’ when discussing the interest [the foreclosing plaintiff] was required to establish at the time it filed the complaint,” and subsequently held that a foreclosing plaintiff has standing to invoke jurisdiction of the court if, at the time it files its complaint of foreclosure, “it either (1) has had a mortgage assigned *or* (2) is the holder of the note” *Id.* at ¶ 21.

Before *Schwartzwald*, Ohio courts were divided on whether a foreclosing plaintiff must establish an interest in both the note *and* mortgage in order to have standing to invoke jurisdiction of the court. For example, the Eighth District in *Jordan* required a foreclosing plaintiff establish an interest in both the note and mortgage while the Sixth District in *U.S. Bank, N.A. v. Coffey*, 6th Dis. No. E-11-026, 2012-Ohio-721, required only a showing of interest in either document. This Court’s decision in *Schwartzwald* resolved that split of authority.

Schwartzwald made clear that the question of standing is whether, under Civil Rule 17, the plaintiff is a real party in interest at the time it commenced suit. *Schwartzwald* holds that a plaintiff is a “real party in interest” if it has *any* interest in the subject matter of the suit; as opposed to *every* interest. *See Fed. Home Loan Mortg. Corp. v. Schwartzwald*, 134 Ohio St. 3d at ¶ 28. The Court’s use of the disjunctive word “or” in paragraph 28 of its decision logically follows the “*any* interest” needed to show standing.

The remainder of the *Schwartzwald* decision also reiterates this Court’s language and logic. The foreclosing plaintiff in *Schwartzwald* obtained an interest in note *and* mortgage after it filed the complaint. This Court found no evidence that the foreclosing plaintiff had suffered “*any* injury” at the time it commenced the foreclosure action. Appellee’s proposition of law would require not just

any interest, but every beneficial interest, in the subject matter of the suit for a foreclosing plaintiff to invoke jurisdiction of the court.

Even Appellee's cited authority weighs in favor of the Eighth District's interpretation. Instead of requiring every beneficial interest in the subject matter, Appellee's cited authority notes that a plaintiff needs only "some real interest" or "any right or interest" in the subject matter of the dispute to invoke jurisdiction of the court. *State ex rel. Dallman v. Court of Common Pleas*, 35 Ohio St. 2d 176, 298 N.E.2d 515 (1973); *Northland Ins. Co. v. Illuminating Co.*, 11th Dist. Nos. 2002-A-0058 and 2002-A-0066, 2004-Ohio-1529, ¶ 17; *Travelers Indemn Co. v. R.L. Smith Co.*, 11th Dist. No. 2000-L-014, 2001 WL 369677 (April 13, 2001).

Appellant's claim that "CitiMortgage, Inc. simply had no dispute with...David and Marva Patterson" is patently false. Appellant's Br. at 12. The Eighth District noted that CitiMortgage was the holder of the Note (that was indorsed in blank) at the time it filed suit. *CitiMortgage, Inc. v. Patterson* at ¶ 22. CitiMortgage thus had an interest in the subject matter of the dispute when it filed the Complaint.

Appellants' proposition of law alleges both that the Eighth District erred when it found that CitiMortgage was the holder of the note at the time it filed the Complaint, and that this Court erred when holding that any interest in the subject matter can vest a foreclosing plaintiff with standing. Neither of Appellant's propositions raise a substantial constitutional question or a case of public or great general interest.

Appellant's Proposition of Law No. II

It is error to reverse the decision granting a 60(b) motion to vacate a judgment of foreclosure when the opposing party does not point to anywhere in the record to indicate that the trial judge abused his discretion.

The Eighth District also properly disposed of this issue. The trial court erroneously granted Appellant's 60(b) motion because "the mortgage was not assigned to plaintiff CitiMortgage, Inc.

until 10/13/2006, after the case was filed.” The Eighth District found CitiMortgage had standing to file the Complaint under the then-recent *Schwartzwald* holding because it was the holder of the note at the time it filed the Complaint. The trial court abused its discretion when it found that CitiMortgage had *an* interest in the subject matter of the dispute, yet nonetheless held that CitiMortgage lacked standing.

Even if the Eighth District did not identify an abuse of discretion, that alleged error (which nonetheless follows current Ohio Supreme Court authority) is not of public or great general interest nor does it raise a substantial constitutional question. The Eighth District applied the straightforward *Schwartzwald* holding to overrule the trial court’s decision to award Appellant 60(B) relief nearly four years after it entered judgment. Whether or not the Eighth District specifically identified an abuse of discretion is not the type of jurisdictional appeal contemplated by Article IV of the Ohio Constitution.

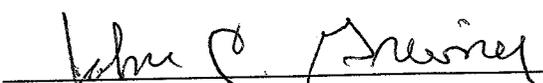
CONCLUSION

This Court should not accept jurisdiction over this appeal. There is no public or great general interest in reviewing Eighth District’s straightforward interpretation of the plain language and logic of *Schwartzwald*. There is also no substantial constitutional question presented. Appellee CitiMortgage, Inc., respectfully requests, therefore, that the Court decline to exercise jurisdiction.

Respectfully submitted,

OF COUNSEL:

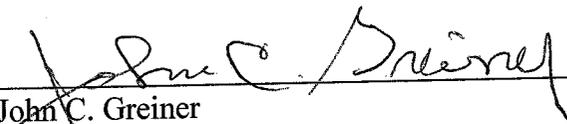
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was sent by Regular U.S. Mail, postage prepaid, and electronic mail, to Grace Doberdruk, Doberdruk & Harshman, 4600 Prospect Avenue, Cleveland, Ohio 44103, this 20th day of February, 2013.



John C. Greiner