

ORIGINAL

IN THE SUPREME COURT OF OHIO

WELLS FARGO BANK, N.A.,

Plaintiff-Appellant,

v.

BRIAN HORN, *et al.*,

Defendants-Appellees.

* Case No. 13-1534
 *
 * On Appeal from the Lorain County
 * Court of Appeals, Ninth Appellate
 * District
 *
 * Court of Appeals
 * Case No. 12CA010230
 *
 *
 *

MEMORANDUM IN SUPPORT OF JURISDICTION OF PLAINTIFF-APPELLANT
 WELLS FARGO BANK, N.A.

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**EXPLANATION OF WHY THIS IS A CASE
OF GREAT GENERAL INTEREST**

This case presents important mortgage foreclosure standing questions arising from *Fed. Home Loan Mortg. Corp. v. Schwartzwald*, 134 Ohio St.3d 13, 2012-Ohio-5017, 979 N.E.2d 1214. In *Schwartzwald*, this Court concluded that standing, when challenged, must be proven to exist at the time of filing the complaint. In that case, the plaintiff neither attached documents evidencing its standing to the complaint, nor provided documents prior to judgment showing that it possessed standing at the time of filing the complaint.

Here, Wells Fargo Bank, N.A. (“Wells Fargo”) did both — it attached bearer paper to the filed Complaint, and as part of summary judgment, submitted undisputed evidence to demonstrate that it was the successor by merger to the original mortgagee (and had been since 2004). The borrower appealed the entry of summary judgment, but did not raise standing.

The Ninth District nonetheless *sua sponte* decided that *Schwartzwald* not only requires proof that the plaintiff had standing as of the date that it filed the complaint, but requires that evidence be attached to the complaint itself. Because Wells Fargo failed to attach documents evidencing the corporate merger to the complaint, the Ninth District (again *sua sponte*) reversed the judgment and remanded the case with instructions to dismiss it.

On two separate points, the decision of the Ninth District is in conflict with the other appellate districts. First, the Ninth District is currently the only district that interprets *Schwartzwald* to require a plaintiff to attach to a complaint all of the documents upon which a plaintiff will rely to show standing. The Ninth District’s holding not only conflicts with Civ.R. 10(D), but with decisions of the Eighth and Tenth Districts, both of whom have interpreted *Schwartzwald* to permit the introduction of evidence of standing during summary judgment proceedings or at trial.

Second, even if this Court intended *Schwartzwald* to change existing Ohio law and require a plaintiff to attach all of its evidence of standing to a complaint, Wells Fargo had attached a copy of the Note with a blank indorsement, showing that it was bearer paper. The Ninth District rejected the contention that attaching bearer paper to the Complaint gives standing to enforce both the Note and the Mortgage. Both the Seventh and the Eighth Districts have reached the opposite conclusion.

This case presents the Court the opportunity to resolve the District Courts of Appeals' conflicting interpretations of *Schwartzwald*. The Court should accept jurisdiction to make clear when and how standing must be proven.

STATEMENT OF THE CASE AND FACTS

Statement of the Case

On April 19, 2010, Wells Fargo filed this action against Brian and Carol Horn, seeking judgment on a promissory note ("Note") and to foreclose a mortgage ("Mortgage") against 9800 Root Road, Columbia Station, Ohio 44028.

On June 2, 2010, Brian Horn, acting pro se, filed a "Response" to the Complaint. On July 21, 2010, Wells Fargo filed a Motion for Summary Judgment.

On September 2, 2010, after retaining counsel, Mr. Horn filed a Motion for Leave to File an Answer Instantly. On September 16, 2010, the motion was granted, and Mr. Horn filed an Answer.

On May 12, 2011, Wells Fargo filed an Amended Motion for Summary Judgment. On June 2, 2011, Mr. Horn responded by filing an Opposition to the Amended Motion for Summary Judgment. On June 10, 2011, Mr. Horn also filed an Amended Opposition to the Amended Motion for Summary Judgment. On June 24, 2011, the trial court granted summary judgment in favor of Wells Fargo.

On July 25, 2011, Mr. Horn filed a Notice of Appeal to the Ninth District Court of Appeals. On August 11, 2011, the Ninth District dismissed the appeal for lack of a final appealable order.

On August 26, 2011, Mr. Horn filed a Motion to Vacate Judgment under Civ.R. 60(B) (“60(B) Motion”). On August 31, 2011, the trial court stayed the matter due to Mr. Horn’s bankruptcy, and on March 16, 2012, the stay was lifted. On April 6, 2012, Wells Fargo filed a Memorandum in Opposition to the Motion to Vacate. On April 27, 2012, the trial court denied Mr. Horn’s 60(B) Motion, and entered a final Decree and Judgment of Foreclosure.

On May 21, 2012, Mr. Horn again appealed. The Ninth District, *sua sponte*, reversed the summary judgment on the basis of *Schwartzwald. Wells Fargo Bank NA v. Horn*, 9th Dist. No. 12CA010230, 2013-Ohio-2374, ¶¶ 12-13 (the “Opinion”).

On June 17, 2013, Wells Fargo filed a timely Application for Reconsideration. On August 16, 2013, the Ninth District denied the Application.

Statement of Facts

On November 21, 1993, the Horns executed the Note in the principal amount of \$49,323 in favor of Norwest Mortgage, Inc. (“Norwest”). On the same day, to secure repayment of the Note, the Horns also executed the Mortgage. Norwest indorsed the Note in blank.

On April 17, 2000, Norwest merged with Wells Fargo Home Mortgage, Inc. (“WFHMI”). On October 4, 2004, WFHMI merged into Wells Fargo Bank, N.A. (“Wells Fargo”).

On April 19, 2010, Wells Fargo commenced this foreclosure action. Wells Fargo attached a copy of the Note indorsed in blank to the Complaint, as well as a copy of the Mortgage. Although the Complaint described Wells Fargo as “successor by merger to

[WFHMI], fka [Norwest],” it did not attach any documents relating to the mergers and name changes. Because it is the successor by merger to the original mortgagee, there was no assignment of mortgage to attach. On June 2, 2010, Mr. Horn filed a pro se “Response to the Complaint.”

On June 21, 2010, Wells Fargo filed a Motion for Summary Judgment. On September 7, 2010, Mr. Horn filed a Motion for Leave to File an Answer Instanter (“Motion for Leave”). On September 16, 2010, the Magistrate granted the Motion for Leave, and Mr. Horn filed an Answer to the Complaint. Among other things, Mr. Horn asserted that Wells Fargo “may not be the real party interest and lack standing to bring said claim against Defendant.”

On April 22, 2011, Wells Fargo filed an Amended Motion for Summary Judgment supported by the Affidavit of Adam Seeman, Wells Fargo Defensive Litigation Specialist. In his Affidavit, Mr. Seeman testified that he personally reviewed and books and records of Wells Fargo and that Wells Fargo is the current holder of the Note and Mortgage. The Affidavit then authenticated a copy of the Note, indorsed in blank, which was identical to the copy attached to the Complaint. The Affidavit also described the series of mergers and name changes that led Norwest to become Wells Fargo in 2004, and also attached and authenticated documents from the Secretary of State’s office reflecting the mergers and name changes.

On June 2, 2011, Mr. Horn filed a Response to the Amended Motion for Summary Judgment, and on June 10, 2011, Mr. Horn filed an Amended Response to the Amended Motion for Summary Judgment. Mr. Horn argued, among other things, that Wells Fargo was not entitled to enforce the Note because the Note was not properly negotiated to Wells Fargo. In addition, Mr. Horn argued that because the Mortgage was marked with the letters “INV,” the Mortgage had been securitized.

On June 15, 2011, Wells Fargo filed its Reply Memorandum arguing that because the Note was indorsed in blank and in its possession, Wells Fargo was entitled to enforce the Note and Mortgage. The magistrate agreed, and on June 24, 2011, issued a decision that included findings of fact and conclusions of law, and held that Wells Fargo was entitled to summary judgment. On June 27th, the trial court adopted the magistrate's finding and issued a decree of foreclosure.

On June 25, 2011, Mr. Horn filed a notice of appeal that was dismissed by the Ninth District for lack of final appealable order because in its decree of foreclosure the trial court failed to establish the priority of liens and amounts due to all claimants.

On August 26, 2011, Mr. Horn renewed his arguments in a 60(B) Motion. After Horn's bankruptcy, on April 27, 2012, the trial court denied the 60(B) Motion and entered a decree of foreclosure and established priority of all liens on the Property.

Mr. Horn appealed, raising four assignments of error, none of which addressed the issue of standing. Nonetheless, the Ninth District, *sua sponte*, held that Wells Fargo had failed to demonstrate standing under *Schwartzwald* because it had not attached "documents evidencing a merger or name change" to the Complaint. Opinion, ¶ 12. It went on to note:

While Wells Fargo later tried to demonstrate that a merger and name change had occurred in the exhibits attached to its motion for summary judgment, it was required to demonstrate that it had standing to invoke the jurisdiction at the time the complaint was filed, and it failed to do so in the complaint and documents attached thereto.

Id., ¶ 13. The Ninth District reversed the judgment and ordered the case be dismissed without prejudice. *Id.*

On June 17, 2013, Wells Fargo filed an Application for Reconsideration, noting that standing had neither been briefed nor argued, and that nothing in *Schwartzwald* required that

standing be premised solely on the documents attached to the Complaint. Wells Fargo also argued that even if *Schwartzwald* now required standing to be proven by documents attached to the Complaint, Wells Fargo had attached to the Complaint a copy of the Note, indorsed in blank, and that as the holder of bearer paper, it was entitled to enforce both the Note and the Mortgage.

On August 16, 2013, the Ninth District denied the Motion for Reconsideration without discussion.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law No. I: A plaintiff is not required to attach to the complaint all of the evidence upon which it will rely to show standing.

In *Schwartzwald*, this Court held that standing depends on the state of things at the time the action is commenced. *Schwartzwald*, at ¶¶ 24-25. Thus, a plaintiff cannot rely on events occurring after the filing of the complaint to establish standing. *Id.* at ¶ 26. To have standing to pursue a foreclosure action, a plaintiff must “establish an interest in the note or mortgage at the time it filed suit.” *Id.* at ¶ 28. In *Schwartzwald*, the documents attached to the complaint did not show that the plaintiff had standing, and the plaintiff did not introduce any documents prior to summary judgment establishing that standing existed as of the filing of the complaint. *Id.* at ¶ 14. As a result, this Court held that the complaint should be dismissed.

The Ninth District has read *Schwartzwald* to now mean that a plaintiff must now attach documents to the complaint¹ to show standing or be subject to dismissal. Opinion, ¶ 13. The Eighth District Court of Appeals has reached the opposite conclusion. *Deutsche Bank Nat’l Trust Co. v. Najjar*, 8th Dist. No. 98502, 2013-Ohio-1657, ¶ 57.

¹ Traditionally, the way to correct any failure to include appropriate documentation as exhibits to a complaint is a motion for more definite statement under Civ.R. 10(D) and Civ.R. 12(E). If insufficient documentation is attached, dismissal is inappropriate until the plaintiff has had an opportunity to cure the defect. *Fletcher v. Univ. Hosps. of Cleveland*, 120 Ohio St.3d 167, 2008-Ohio-5379, 897 N.E.2d 147.

In *Najar*, the copy of the note attached to the complaint was not indorsed in blank or to the plaintiff, and the plaintiff was not the recorded mortgagee at the time of filing, but later submitted evidence showing that as of the date of the complaint, the note had been indorsed. *Id.*, ¶ 58. The Eighth District held “[a]lthough a plaintiff must establish that it was the holder of the note and mortgage at the time the foreclosure action was filed, it need not present its proof ‘on the exact date that the complaint in foreclosure is filed.’” *Id.*, ¶ 57, quoting *Bank of N.Y. Mellon v. Watkins*, 10th Dist. No. 11AP-539, 2012-Ohio-4410, ¶ 18.

In *Najar*, the plaintiff submitted an affidavit detailing that the plaintiff had possessed the note, indorsed in blank, since September 2003. The Eighth District concluded that this “established that [the plaintiff] was the holder of the note at the time it filed its foreclosure complaint” (*Najar*, 2013-Ohio-1657, ¶ 58) even though the indorsement had not been attached to the complaint.

The Tenth District reached the same result in *U.S. Bank Nat’l Ass’n v. Gray*, 10th Dist. No. 12AP-953, 2013-Ohio-3340. In *Gray*, the matter went to trial, including on the question of standing. At trial, U.S. Bank introduced a witness who testified that the bank had possessed the note, indorsed in blank, for more than four years prior to the filing of the action. *Id.*, ¶ 22. The Tenth District noted “[a]lthough a court must determine whether standing exists by examining the state of affairs at the time the action commenced, its examination is not limited to the complaint’s allegations or documents attached to the complaint.” *Id.*, ¶ 20. Citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992), the Tenth District concluded that a trial court “evaluates standing by examining the allegations and/or evidence offered at each stage of litigation.” *Id.*, ¶ 20.

There are now two conflicting approaches to determine how to evaluate standing under *Schwartzwald*. In the Eighth or Tenth District, a plaintiff need only introduce evidence showing that it had standing as of the date the complaint was filed, but need not attach all of that evidence to the complaint. The Ninth District holds that standing can only be shown by the documents attached to the complaint.

The scope of the *Schwartzwald* standing requirements is a question of great general interest. Given the conflicting interpretations of *Schwartzwald* by the District Courts of Appeal, the resolution of that question is now even more important. Jurisdiction should be accepted over this proposition of law.

Proposition of Law No. II: A copy of a note indorsed in blank attached to a complaint is sufficient to demonstrate the plaintiff's standing to enforce the note and a mortgage which secures the note's repayment.

Even if the Ninth District were correct in its interpretation of *Schwartzwald*, this case presents another question of great general or public interest: what must be required to prove standing?

In this case, the Note attached to the Complaint was indorsed in blank by Norwest, making it bearer paper. As the holder of bearer paper, Wells Fargo had standing to enforce the Note. R.C. 1303.31(A); R.C. 1301.01(T). Prior to *Schwartzwald*, the Seventh District Court of Appeals held that having the right to enforce the note automatically gives standing to enforce a mortgage that secures payment of the note. *U.S. Bank N.A. v. Marcino*, 181 Ohio App.3d 328, 336-337, 2009-Ohio-1178, 908 N.E.2d 1032. This is true even if there is no separate assignment of mortgage. *Id.*

The Eighth District interpreted *Schwartzwald* to mean that bearer paper attached to the complaint is sufficient to demonstrate standing. *CitiMortgage, Inc. v. Patterson*, 8th Dist. No.

98360, 2012-Ohio-5894, ¶ 22 (jurisdiction not accepted, 135 Ohio St.3d 1414, 2013-Ohio-1622, 986 N.E.2d 30). The Eighth District has now also held that standing to enforce a note automatically gives standing to enforce a mortgage, even if there is no separate assignment of mortgage prior to the filing of the complaint. *Najar*, 2003-Ohio-1657, ¶ 65.

Following *Schwartzwald*, the Seventh District has also held that attaching bearer paper to the complaint is sufficient to give the plaintiff standing. *CitiMortgage, Inc. v. Loncar*, 7th Dist. No. 11-MA-174, 2013-Ohio-2959, ¶ 15 (appeal pending as Case No. 2013-1270).

The Ninth District completely disregarded the fact that Wells Fargo attached a note indorsed in blank to the Complaint. It did not discuss the effect of attaching bearer paper on standing, and when raised in the Motion for Reconsideration, chose not to address the issue. The Ninth District has now expressly rejected the rule followed in the Seventh and Eighth Districts, and held that a plaintiff must attach evidence of enforceability of *both* the note and the mortgage to the complaint, and that bearer paper alone is insufficient. *BAC Home Loans Servicing, LP v. McFerren*, 9th Dist. No. 26384, 2013-Ohio-3228, ¶ 11.

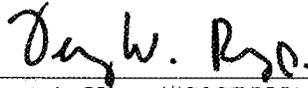
Foreclosures are the most common type of civil action, and the requirements for commencing a foreclosure action present a question of great general interest. With the Opinion, the Ninth District has created precedent conflicting with that of the Seventh and Eighth Districts on whether the right to enforce the note is sufficient to establish standing to enforce the mortgage. The Court should accept jurisdiction over this proposition of law.

CONCLUSION

This case presents the Court with the opportunity to clarify two issues which *Schwartzwald* did not address: (1) does a plaintiff have to attach all of its proof of standing to a complaint, or may that proof be submitted during summary judgment proceedings; and (2) is

possession of bearer paper sufficient to demonstrate standing to enforce both the note and the mortgage. The Court should accept jurisdiction over these important questions.

Respectfully submitted,



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N.A.*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon the following via regular, U.S. Mail, on this 27th day of September, 2013.

Brian Horn
9800 Root Road
Columbia Station, Ohio 44028

J. W. P. O.

Counsel

753079.1

COURT OF APPEALS

STATE OF OHIO)
)ss:
COUNTY OF LORAIN)

IN THE COURT OF APPEALS FILED
NINTH JUDICIAL DISTRICT IN COUNTY

WELLS FARGO BANK NA

C.A. No. 12CA010230

2013 JUN 11 P 12:41

Appellee

CLERK OF COMMON PLEAS
2013 JUN 11 P 12:41

v.

BRIAN HORN, et al.

APPEAL FROM JUDGMENT
ENTERED IN THE LATE DISTRICT
COURT OF COMMON PLEAS
COUNTY OF LORAIN, OHIO
CASE No. 10CV167220

Appellants

DECISION AND JOURNAL ENTRY

Dated: June 10, 2013

CARR, Judge.

{¶1} Appellant, Brian Horn, appeals the judgment of the Lorain County Court of Common Pleas. This Court reverses and remands this matter to the trial court for the complaint to be dismissed.

I.

{¶2} On November 21, 1993, Brian and Carol Horn executed a note for \$49,323 in favor of Norwest Mortgage, Inc., for the property located at 9800 Root Road in Columbia Township, Ohio. The note was secured by an open-end mortgage.

{¶3} Wells Fargo filed the instant foreclosure action on April 19, 2010. The named defendants in the complaint were Brian Horn, Carol Horn, Jane Doe, the unknown spouse of Brian Horn, the Lorain County Treasurer, Huntington National Bank, and First Merit Bank. On June 2, 2010, Brian Horn, acting pro se, filed a handwritten "Response to Complaint." On July 21, 2010, Wells Fargo filed a motion for summary judgment. On September 2, 2010, Mr. Horn

filed a motion for leave to file an answer instanter in because he had retained counsel. On September 16, 2010, a magistrate granted the motion for leave, and Mr. Horn filed his formal answer to the complaint. In his answer, Mr. Horn claimed that Wells Fargo "may not be the real party in interest and lacks standing to bring said claim against Defendant." Subsequently, on May 12, 2011, Wells Fargo filed an amended motion for summary judgment. On June 2, 2011, Mr. Horn filed a brief in opposition to the amended motion for summary judgment.

{¶4} On June 24, 2011, the magistrate issued findings of fact and conclusions of law, and determined that Wells Fargo was entitled to summary judgment on the note and mortgage. On the same day, the trial court issued a journal entry adopting the magistrate's findings and granting summary judgment in favor of Wells Fargo.

{¶5} Mr. Horn filed a notice of appeal from the June 24, 2011 journal entry. On August 11, 2011, the Court issued a journal entry dismissing the appeal on the basis that the trial court had yet to issue a judgment of foreclosure.

{¶6} On August 26, 2011, Mr. Horn filed a motion in the trial court requesting that the summary judgment order be vacated pursuant to Civ.R. 60(B). Wells Fargo filed a memorandum in opposition to the motion on April 6, 2012. On April 27, 2012, the trial court issued a journal entry denying Horn's motion on the basis that he had not presented a meritorious defense. The trial court also granted the decree of foreclosure, setting forth the priority of the liens on the property.

{¶7} Mr. Horn filed a timely notice of appeal. On appeal, Mr. Horn raises four assignments of error.

II.

ASSIGNMENT OF ERROR I

THE TRIAL COURT ERRED IN ALLOW[ING] MANIPULATED DOCUMENTS SUBMITTED AS EVIDENCE.

ASSIGNMENT OF ERROR II

THE TRIAL COURT ERRED IN FINDING WELLS FARGO BANK MADE REASONABLE EFFORTS TO ARRANGE A FACE-TO-FACE INTERVIEW (CFR 203.604).

ASSIGNMENT OF ERROR III

THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT IN WHICH JUDGMENT WAS NOT FINAL AND APPEALABLE.

ASSIGNMENT OF ERROR IV

WAS BRIAN HORN'S ATTORNEY, MR. MARK DANN, ACTING IN CLIENT'S BEST INTEREST?

{¶8} Mr. Horn raises four assignments of error in which he argues that the trial court erred in granting summary judgment in favor of Wells Fargo. We agree.

{¶9} “We note that [a] foreclosure requires a two[-]step process.” (Internal quotations and citations omitted.) *Natl. City Bank v. Skipper*, 9th Dist. No. 24772, 2009-Ohio-5940, ¶ 25. “The prerequisites for a party seeking to foreclose a mortgage are execution and delivery of the note and mortgage; valid recording of the mortgage; default; and establishing an amount due.” (Internal quotations and citations omitted.) *CitiMortgage, Inc. v. Firestone*, 9th Dist. No. 25959, 2012-Ohio-2044, ¶ 11. “Once a court has determined that a default on an obligation secured by a mortgage has occurred, it must then consider the equities of the situation in order to decide if foreclosure is appropriate.” (Internal quotations and citations omitted.) *Skipper* at ¶ 25. As the Ohio Supreme Court recently decided, before a court can consider this, the plaintiff must establish that it has standing to proceed. *See Fed. Home Loan Mtge. Corp. v. Schwartzwald*, 134

Ohio St.3d 13, 2012-Ohio-5017, ¶ 40. “It is well established that before an Ohio court can consider the merits of a legal claim, the [party] seeking relief must establish standing to sue.” *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451, 469 (1999), citing *Ohio Contractors Assn. v. Bicking*, 71 Ohio St.3d 318, 320 (1994).

{¶10} Civ. R. 17(A) states, in a pertinent part:

Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his name as such representative without joining with him the party for whose benefit the action is brought.

“In foreclosure actions, the real party in interest is the current holder of the note and mortgage.” *U.S. Bank, N.A. v. Richards*, 189 Ohio App.3d 276, 2010-Ohio-3981, ¶ 13 (9th Dist.), quoting *Everhome Mtge. Co. v. Rowland*, 10th Dist. No. 07AP-615, 2008-Ohio-1282, ¶ 12. Civ.R. 17(A) is not applicable “unless the plaintiff ha[s] standing to invoke the jurisdiction of the court in the first place * * *.” *Wells Fargo Bank, N.A. v. Jordan*, 8th Dist. No. 91675, 2009-Ohio-1092, ¶ 21, quoting *Northland Ins. Co. v. Illuminating Co.*, 11th Dist. Nos. 2002-A-0058, 2002-A-0066, 2004-Ohio-1529, ¶ 17.

{¶11} The trial court decided that Wells Fargo had standing when it granted summary judgment. In *Schwartzwald*, however, the Supreme Court held that because standing is required to invoke the jurisdiction of the common pleas court, “standing is to be determined as of the commencement of suit.” *Schwartzwald* at ¶ 24, quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 570-571 (1992). A party may not later rely on the Rules of Civil Procedure to cure a lack of standing when it has failed to demonstrate that it had standing at the time the complaint was filed. *Schwartzwald* at ¶ 37-38. The high court concluded that “[t]he lack of standing at the commencement of a foreclosure action requires dismissal of the complaint[.]” *Id.* at ¶ 40.

{¶12} In this case, Wells Fargo filed its complaint on April 19, 2010. A review of the complaint does not demonstrate that it had standing at the time it filed its foreclosure complaint. In the caption, Wells Fargo identified itself as the “successor by merger to Wells Fargo Home Mortgage, Inc. fka Norwest Mortgage, Inc.” However, while Wells Fargo attached several documents to the complaint, including the note and mortgage, no documents evidencing a merger or a name change were attached. The note and mortgage each identify the Horns as the borrowers and Norwest Mortgage, Inc. as the lender.

{¶13} It follows that Wells Fargo lacked standing to bring the foreclosure action against the Horns. While Wells Fargo later tried to demonstrate that a merger and name change had occurred in the exhibits attached to its motion for summary judgment, it was required to demonstrate that it had standing to invoke the jurisdiction at the time the complaint was filed, and it failed to do so in the complaint and the documents attached thereto. *Wells Fargo v. Burrows*, 9th Dist. No. 26326, 2012-Ohio-5995, ¶ 15. Therefore, the trial court erred in concluding that Wells Fargo was entitled to judgment as a matter of law. Pursuant to the Ohio Supreme Court’s decision in *Schwartzwald*, we are required to sustain Mr. Horn’s assignments of error, reverse summary judgment, and order the trial court to dismiss the complaint without prejudice.

III.

{¶14} Mr. Horn’s assignments of error are sustained. The judgment of the Lorain County Court of Common Pleas is reversed and the cause remanded for further proceedings consistent with this decision.

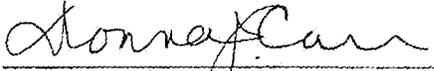
Judgment reversed,
and cause remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellee.



DONNA J. CARR
FOR THE COURT

MOORE, P. J.
WHITMORE, J.
CONCUR.

APPEARANCES:

BRIAN HORN, pro se, Appellant.

SCOTT A. KING and NICHOLAS W. MYLES, Attorneys at Law, for Appellee.

STATE OF OHIO)

COUNTY OF LORAIN)

COURT OF APPEALS

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

FILED
LORAIN COUNTY

WELLS FARGO BANK NA,

2013 AUG 16

P 12:55

C.A. No. 12CA010230

Appellee

v.

BRIAN HORN, et al.,

Appellants

CLERK OF COMMON PLEAS
LORAIN COUNTY, OHIO

9th APPELLATE DISTRICT

JOURNAL ENTRY

Appellee has moved this Court to reconsider our decision journalized on June 10, 2013. Appellants have not filed a responsive brief.

In determining whether to grant a motion for reconsideration, a court of appeals must review the motion to see if it calls to the attention of the court an obvious error in its decision or if it raises issues not considered properly by the court. *Garfield Hts. City School Dist. v. State Bd. of Edn.*, 85 Ohio App.3d 117 (10th Dist.1992). In support of its motion, appellee argues that this Court misinterpreted the standing requirement articulated by the Supreme Court of Ohio in *Fed. Home Loan Mtge. Corp. v. Schwartzwald*, 134 Ohio St.3d 13, 2012-Ohio-5017. This Court finds that the motion for reconsideration in this case neither calls attention to an obvious error nor raises an issue that we did not consider properly.

The motion is denied.



Judge

Concur:

MOORE, P.J.

WHITMORE, J.