

IN THE SUPREME COURT OF OHIO

JPMorgan Chase Bank, N.A.,  
Successor by merger to Chase Home  
Finance LLC, Successor by Merger to  
Chase Manhattan Mortgage Corporation :

13-1763

Case No. \_\_\_\_\_

Plaintiff-Appellee

vs.

Raymond E. Romine

Defendant-Appellant

On Appeal from the Franklin County  
Court of Appeals  
Tenth Appellate District  
Court of Appeals Case No. 13AP-58

Brian K. Urbanski, as Trustee of the 424  
Stonecrop Court Trust,

Defendant-Appellant

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MEMORANDUM IN SUPPORT OF JURISDICTION  
OF APPELLANT BRIAN K. URBANSKI, AS TRUSTEE OF THE  
424 STONECROP COURT TRUST

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Proposition of Law No. 1:

In a recent decision expressly addressing the relevancy of standing in a foreclosure action, the Supreme Court of Ohio stated that standing is a jurisdictional requirement which must be met before a common pleas court can proceed. *Fed. Home Loan Mortg. Corp. v. Koch*, 2013-Ohio-4423 (App. 11th dist. 2013), citing to *Federal Home Loan Mort. Corp. v. Schwartzwald*, 134 Ohio St.3d 13, 2012-Ohio-5017, ¶ 22. In order to have standing to bring a foreclosure case, the plaintiff must demonstrate that it has an interest in either the promissory note or mortgage. *Id.* citing to *Federal Home Loan Mort. Corp. v. Rufo*, 11th Dist. Ashtabula No. 2012-A-0011, 2012-Ohio-5930, ¶ 18. The requirement of an "interest" can be met by showing an assignment of either the note or mortgage. *Id.* citing to *Rufo* at ¶ 44. In addition, this interest must have existed at the time the foreclosure complaint was filed; there can be no standing to proceed if the interest is acquired when the action is already pending. *Id.* citing to *Schwartzwald*, at ¶ 25-27.

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**EXPLANATION OF WHY THIS CASE IS  
OF PUBLIC OR GREAT GENERAL INTEREST**

This case presents a timely opportunity for this Court to resolve a split in authority among the various District Courts of Appeal of Ohio and address several fundamental issues in Ohio civil cases. The question is whether or not defendants to a foreclosure action can challenge an assignment's validity. In light of the conflicting rulings on these issues among Ohio appellate districts, it is critically important that a definitive standard be established to promote consistency in the legal standard used to decide whether a party is entitled to bring a foreclosure action. Despite the underlying issue being one that is largely factual and dependent on the nature of each individual case, a resolution is of great public interest, and would further promote consistency in Ohio law and efficiency in Ohio courts.

The policy reason given not allowing a defendant to challenge an assignment's validity, is "because a debtor is not a party to the assignment of a note and mortgage, the debtor lacks standing to challenge their validity." *Deutsche Bank Natl. Trust. Co. v. Whiteman*, 10th Dist. No. 12AP-536, 2013-Ohio-1636. However, despite the fact that debtor is not a party to the assignment of the note and mortgage the Defendant should be able to challenge a plaintiff's standing to bring a foreclosure action. In the interests of this case as well the interests of the general public, the court should reconsider a defendant's ability to challenge standing based on an assignment of a note and mortgage to a third party.

**STATEMENT OF THE CASE AND FACTS**

On November 15, 2002, Raymond E. Romine ("Romine") executed a promissory note and loan with Chase Manhattan Mortgage Corp. ("Chase Manhattan") in the amount of \$73,500. (Trial Ex. A and C). Further, this Note was secured by a mortgage, executed on the same day, encumbering the property commonly known as 424 Stonecrop Court, Galloway, Ohio ("the real

property”). *Id.* On November 27, 2002 Chase Manhattan assigned the Romine note and Mortgage by an “Assignment of Mortgage” to Federal National Mortgage Association (“Fannie Mae”). (Trial Ex. 1). Subsequently, Chase Home Finance, LLC merged with Chase Manhattan Mortgage Company on December 15, 2004, which then merged with JP Morgan Chase Bank, N.A (“Plaintiff/Appellee”). (Trial Ex. C).

On September 22, 2005, Romine conveyed his interest in the mortgaged real property by general warranty to “424 Stonecrop Court Trust, J.A. Gilcher, as Trustee.” Then on July 27, 2009, Gilcher resigned as trustee by an “affidavit of successor trustee,” appointing Brian K. Urbanski (“Defendant/Appellant) as successor trustee of the 424 Stonecrop Trust. (Trial Ex. 2 and 3).

On June 6, 2011, Appellee filed its complaint against Appellant. Appellant filed an Answer and Counterclaim on July 5, 2011. On October 7, 2011, Appellee filed a Civ. R. 12(B)(6) Motion to Dismiss the Counterclaim. Appellant filed its Memorandum Contra to the Motion to Dismiss on October 20, 2011. Appellee filed its Reply brief on November 14, 2011. The Court granted the motion to dismiss on February 1, 2012.

On April 5, 2012, Appellant filed its Motion for Reconsideration or in the Alternative Certify the Order as Final and Appealable, moving the court reconsider its dismissal of Appellant’s counterclaim. The trial court denied Appellant’s Motion for Reconsideration or in the Alternative Certify the Order as Final and Appealable on May 14, 2013.

Appellee filed its motion for Leave to file Its Motion for Summary Judgment and Its Motion for Summary Judgment Against Defendant Brian Urbanski, Successor Trustee of the 424 Stonecrop Trust, *Instantly*, on July 18, 2012. On August 10, 2012, Appellee filed a Motion to

Dismiss Appellant. Subsequently, on August 12, 2012 Appellant filed its own Motion to Dismiss Appellee, on the grounds that Appellee lacked standing to pursue the foreclosure action.

A bench trial was held before Magistrate Lippe on August 13, 2012, and subsequently the trial court granted Appellees Motion to Dismiss Appellant on August 14, 2012 and denied Appellant's Motion to Dismiss Appellee. Due to the fact that Appellee withdrew its Motion to Dismiss Appellant during the hearing on August 13, 2012, and that the Appellant's Motion to Dismiss was denied, the trial court later vacated its August 14, 2012 Order.

Magistrate Lippe filed the Magistrate's Decision on August 21, 2012 finding that Appellee was a real party in interest, that damages were owed to Appellee and that the matter proceed as an *in rem* foreclosure claim. On September 21, 2012 after being granted an extension, Appellant filed its Objections to the Magistrate's Decision. Appellee filed its Reply Memo to Appellant's Objections on October 2, 2012, and Appellant subsequently filed its Reply on October 13, 2012.

The trial court adopted the Magistrate's Decision on December 21, 2012 in its Decision and Entry Overruling Defendant's Objections and Adopting Magistrate's Decision on Bench Trial filed August 21, 2012. On January 7, 2013, the trial court filed its Judgment Entry of foreclosure. Appellant timely appealed both the above orders to the Court of Appeals of Franklin County, Ohio, Tenth Appellate District ("Appellate Court") on January 23, 2013. On September 26, 2013, the Appellate Court set forth a Judgment Entry affirming the trial court's judgment, from which the present appeal is brought. A copy of said Judgment Entry is attached hereto as Exhibit A.

## ARGUMENT

### *Petitioner's First Proposition of Law:*

In a recent decision expressly addressing the relevancy of standing in a foreclosure action, the Supreme Court of Ohio stated that standing is a jurisdictional requirement which must be met before a common pleas court can proceed. *Fed. Home Loan Mortg. Corp. v. Koch*, 2013-Ohio-4423 (App. 11th dist. 2013). citing to *Federal Home Loan Mort. Corp. v. Schwartzwald*, 134 Ohio St.3d 13, 2012-Ohio-5017, ¶ 22. In order to have standing to bring a foreclosure case, the plaintiff must demonstrate that it has an interest in either the promissory note or mortgage. *Id.* citing to *Federal Home Loan Mort. Corp. v. Rufo*, 11th Dist. Ashtabula No. 2012-A-0011, 2012-Ohio-5930, ¶ 18. The requirement of an "interest" can be met by showing an assignment of either the note or mortgage. *Id.* citing to *Rufo* at ¶ 44. In addition, this interest must have existed at the time the foreclosure complaint was filed; there can be no standing to proceed if the interest is acquired when the action is already pending. *Id.* citing to *Schwartzwald*, at ¶ 25-27.

In order to promote fairness and equality in foreclosure actions, it is imperative that only those who are holders of the relevant note and mortgage at the time of filing are deemed to have standing. This Court has held that an individual, or one in a representative capacity, does not have a real interest, in the subject matter of the action, if that party lacks standing to invoke the jurisdiction of the of the court. *State ex rel. Dallman v. Court of Common Pleas, Franklin County*, 35 Ohio St.2d 176, 298 N.E.2d 515 (1973). Specifically, in a foreclosure case, the plaintiff must demonstrate that it has an interest in either the promissory note or mortgage, to prove standing. *Koch* citing to *Schwartzwald*, 2012-Ohio-5017 ¶ 22. In the present matter, Chase no longer has standing because they assigned their interest in the note and mortgage to Federal National Mortgage Association (hereinafter, "Fannie Mae"). As the United States Supreme Court noted in *Carpenter v. Longan*, 83 U.S. 271, 274 (1872), "The note and mortgage are inseparable; the former as essential, the latter as an incident. An assignment of the note carries the mortgage

with it, while an assignment of the latter alone is a nullity.” Every time a note is transferred to a new holder, an assignment of mortgage must follow. Without such assignment the mortgage is severed from the note. Conversely, assignment of the mortgage to another entity, requires then the negotiation of the note to that same entity in order to enforce the mortgage.

An assignment can be effectuated in several ways. An assignment can be written either on the original mortgage, in the margin of the original mortgage record, or by executing a separate instrument of assignment. R.C.5301.31; 5301.32. The assignment of the mortgage, “shall transfer not only the lien of the mortgage but also all interest in the land described in the mortgage.” R.C.5301.31.

If the assignment occurs by executing a separate instrument it must be recorded in the satisfaction of mortgages book provided by section 5301.34 of the Revised Code. Upon fulfilling this requirement, the mortgage holder satisfies the purpose of this section by putting third parties on notice. However, failure to record the assignment does not invalidate the agreement between the parties. *Bank One, Na v. Dillon*, 2005-Ohio-1950 (9th Dist.) citing to *McComis v. Walker* (Oct. 4, 1979), 10th Dist. No. 79AP-243, at \*7. In fact, failure to timely record the assignment has no effect on the [assignee’s] authority to enforce the mortgage by foreclosure. *Id.*

Therefore, as a direct result of the mortgage assignment to “Fannie Mae”, Appellee no longer had the authority to enforce the mortgage by foreclosure. This assignment is verified by Frank Dean’s testimony. Mr. Dean, a home loan research officer for JP Morgan Chase Bank, N.A., testified that he discovered the original copy of the assignment while reviewing Chase’s loan files. (Tr. 34 and Ex. 1). Mr. Dean further testified that the assignment was executed before a notary on November 27, 2002, a few weeks after the initial execution of the mortgage. (Tr. 25

and Trial Ex. 1). Therefore, by the time Chase Manhattan merged with Chase Home Finance, LLC, and subsequently into Chase, the mortgage was no longer an asset of Chase.

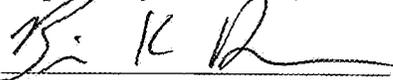
Additionally, Mr. Dean's testimony indicates that the assignment was "made by virtue of Resolution of its Board of Directors." (Tr. 25 and Trial Ex. 1). This resolution further verifies Chase's assignment of its interest in the note and mortgage to "Fannie Mae". Correspondingly, the assignor no longer has the right to enforce the mortgage as it was assigned to another entity. Because Appellee was not a holder in due course of the mortgage loan obligation they cannot enforce the same. Therefore, pursuant to *Schwartzwald*, Appellee did not have an existing interest, or standing, at the time the foreclosure complaint was filed and cannot obtain interest while this action is pending. *Schwartzwald*, at ¶ 25-27.

#### CONCLUSION

The present matter presents a question this is not only highly relevant to the general public, but which also has created great conflict among Ohio trial courts and Ohio Courts of Appeal. As set forth above, Appellant can show that Appellee no longer had an interest in either the promissory note or mortgage at the time the foreclosure complaint was filed and, therefore, did not have standing to foreclose on Appellant's property. Thus, Appellant respectfully requests that this Court exercise its inherent power to relieve Appellant from the unjust operation of judgment, and thereby ultimately vacate the underlying Judgment Entry

For the foregoing reasons, Appellant respectfully requests that this Court accept jurisdiction in this case.

Respectfully Submitted,



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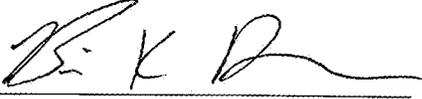
**CERTIFICATE OF SERVICE**

I hereby certify that I have mailed the foregoing Memorandum in Support of Jurisdiction by United States regular mail, postage prepaid, on November 8, 2013 to the following:

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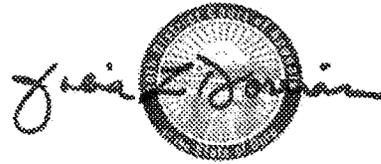
  
\_\_\_\_\_  
Brian K. Duncan (0080751)



Tenth District Court of Appeals

**Date:** 09-26-2013  
**Case Title:** JPMORGAN CHASE BANK NATIONAL ASSOCIATION -VS- RAYMOND E ROMINE  
**Case Number:** 13AP000058  
**Type:** JEJ - JUDGMENT ENTRY

So Ordered

A handwritten signature in cursive script, appearing to read "Julia L. Dorrian", is written over a circular, textured seal. The seal has a sunburst or starburst pattern in the center.

/s/ Judge Julia L. Dorrian



***Facts and Case History***

{¶ 2} On November 15, 2002, defendant-appellee, Raymond E. Romine ("Romine"), executed a promissory note in the amount of \$73,500 in connection with a loan in the same amount. The note identified the lender as Chase Manhattan Mortgage Corp. ("Chase Manhattan"). On the same date, Romine executed a mortgage in favor of Chase Manhattan on real property located at 424 Stonecrop Court in Galloway, Ohio ("the real property"). The parties do not dispute that Chase Manhattan thereafter merged with Chase Home Finance, LLC ("Chase Home Finance") and that Chase Home Finance, LLC thereafter merged with Chase.

{¶ 3} Chase attached to the complaint copies of the note and the mortgage as well as a copy of a preliminary judicial title report. The note bears a general "pay to the order of" endorsement, in blank, initialed by an assistant secretary of Chase Manhattan. The title report, based on examination of Franklin County records, disclosed that Romine, the mortgagor, had on September 22, 2005, conveyed the mortgaged real property by general warranty deed to "424 Stonecrop Court Trust, J.A. Gilcher, as Trustee." In addition, public records included an "affidavit of successor trustee," dated July 27, 2009, indicating that Gilcher had resigned as trustee and that appellant had been appointed successor trustee of the 424 Stonecrop Court Trust.

{¶ 4} On June 6, 2011, Chase filed a complaint seeking foreclosure of the real property naming as defendants, inter alia, Romine and appellant. Chase alleged that it was the holder of the promissory note and the mortgage; the note and mortgage were in default for lack of payment, and Chase had declared the debt due. Chase further alleged that the mortgage created a valid and first lien upon the real property. Chase sought judgment against Romine in the amount of the sum it alleged was unpaid on the note (\$46,173.13 plus interest dating from May 1, 2009), an order of foreclosure of the mortgage, and sale of the premises to satisfy the amounts due it.

{¶ 5} Appellant answered the complaint and denied Chase's allegations that Chase was the holder of a valid note and mortgage and was entitled to seek a decree of foreclosure. Appellant asserted as a defense that Chase lacked legal standing to prosecute the foreclosure. Appellant also included a counterclaim seeking to quiet title to the

property and sought a judgment declaring the mortgage null and void or, alternatively, a judgment rescinding the mortgage.

{¶ 6} Chase thereafter filed a motion pursuant to Civ.R. 12(B)(6) seeking dismissal of appellant's counterclaims for failure to state a claim. Appellant opposed Chase's motion, but the trial court ultimately granted Chase's Civ.R. 12(B)(6) motion and dismissed appellant's counterclaims.

{¶ 7} The court referred the matter to a magistrate, who conducted a bench trial. At trial, a Chase loan research officer, Frank Dean, testified that the original mortgagee, Chase Manhattan, had merged into Chase Home Finance, which itself thereafter merged into Chase. Dean further testified that the note and the mortgage had always been retained by one of these Chase entities and that, to his knowledge, the note and mortgage had never been delivered or transferred to a non-Chase entity. Dean further testified that Chase last received payment on the note on May 1, 2009, and that Chase had accelerated the note based on payment default. Chase introduced numerous exhibits, including copies of the note and the mortgage, papers reflecting that payments on the note and mortgage were delinquent, and documents evidencing the mergers of the Chase entities. These exhibits were admitted into evidence without objection.

{¶ 8} On cross-examination, Dean acknowledged that Chase's records included a document titled "Assignment of Mortgage," ("the assignment") that had been signed and notarized on November 27, 2002—several weeks after Romine had executed the original note and mortgage. The document stated that Chase Manhattan had assigned the Romine note and mortgage to the Federal National Mortgage Association ("Fannie Mae"). Dean testified, however, that, based on his review of the records, the assignment was never given to Fannie Mae, nor was it ever recorded.

{¶ 9} Appellant also testified. He stated that Romine had deeded the real property to the 424 Stonecrop Court Trust, of which he was the current trustee. He acknowledged that the trust had initially made payments to Chase but had ultimately stopped making payments.

{¶ 10} On August 21, 2012, the magistrate found that Chase had proved both the existence of the note and the mortgage and their breach. The magistrate expressly found Chase to be the holder of the original note and that there was "no documentation that [the

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assignment] was ever recorded or that the assignment was effectuated with the Federal National Mortgage Association." (Aug. 21, 2012 Magistrate Decision, 3.) She further concluded that, as a matter of law, Chase was the real party in interest—not Fannie Mae. The magistrate recommended that the matter proceed to sheriff's sale as an in rem foreclosure.<sup>1</sup>

{¶ 11} Appellant filed written objections to the magistrate's decision contending that the magistrate erred in finding that the assignment had never been effectuated. Appellant noted that the assignment indicated on its face that it had been executed and notarized prior to the merger of Chase Manhattan into Chase Home Finance. He argued that Chase Manhattan had thereby "assigned away" to Fannie Mae its rights to enforce the mortgage and that the successor Chase entities similarly lacked standing to prosecute a foreclosure. (Appellant's Sept. 21, 2012 Objections, 5.)

{¶ 12} In addition, appellant contended that the assignment had been "robo-signed," which appellant defined as "signing legal documents without reviewing the file for which one is signing the document." (Objections, 6.) Appellant suggested that the assignment evidenced fraud in its execution and urged the court to find that the assignment had, in fact, operated to transfer the mortgagee's rights to Fannie Mae as of the date of the alleged robo-signing.

{¶ 13} On December 21, 2012, the common pleas court overruled appellant's objections to the magistrate's decision and adopted the decision as its own. The court cited a 2012 decision of this court in which we found that, "because the debtor is not a party to the assignment of the mortgage, [the debtor] lacks standing to challenge its validity." *LSF6 Mercury REO Invests. Trust Series 2008-1, c/o Vericrest Fin., Inc. v. Locke*, 10th Dist. No. 11AP-757, 2012-Ohio-4499, ¶ 28, citing *Bank of New York Mellon Trust Co. v. Unger*, 8th Dist. No. 97315, 2012-Ohio-1950, ¶ 35. The court cited *Chase Home Fin., L.L.C. v. Heft*, 3d Dist. No. 8-10-14, 2012-Ohio-876, as support for the same proposition and observed that these cases followed precedent established in two federal court decisions, *Livonia Prop. Holdings 12840-12976 v. Farmington Rd. Holdings*, 717 F. Supp.2d 724 (2010) and *Bridge v. Aames Capital Corp.*, No. 1:0-9 CV 2947 (N.D. Ohio 2010). In those cases, the

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<sup>1</sup> The record does not reflect successful service of process on the original borrower and mortgagor, Raymond Romine, and Chase did not seek, nor did the court issue, a judgment finding any of the defendants personally liable for monetary damages.

court observed that a borrower may not challenge an assignment between an assignor and assignee and that the borrower does not have standing to dispute the validity of such an assignment because the borrower was not a party to those documents. The court noted that there was no dispute in the case before it that appellant had stopped making payments on the loan and was in default on the note. The court concluded that appellant did not have standing to challenge the validity of the assignment of the note and mortgage. In addition, the court held that Chase had provided sufficient evidence to support a finding that it was the holder of the note and mortgage.

{¶ 14} Appellant timely filed a notice of appeal and asserts the following two assignments of error:

1. The court erred in finding that Appellee, JP Morgan Chase Bank, N.A., had standing to foreclose when a valid assignment of mortgage existed and was admitted at trial as being signed and executed with the original in Appellee's file.
2. The trial court erred in finding that Appellant lacked standing to enforce the assignment because Appellant was not a party to the assignment, citing *LSF6 Mercury REO Invs. Trust Series 2008-1 v. Locke*, 10th Dist. No. 11AP-757, 2012-Ohio-4499.

### **Analysis**

{¶ 15} We first address the second assignment of error as we find it dispositive.

{¶ 16} In *Locke*, this court held that a defendant borrower in a foreclosure action lacked standing to challenge the validity of an assignment of a note and mortgage the borrower had executed where no dispute existed as to the fact that the borrower had defaulted on her payment obligations. The allegedly invalid mortgage assignments did not alter the homeowner's obligations under the note or mortgage. "The assignee bank filed the foreclosure complaint based on the homeowners' default under the note and mortgage, not because of the mortgage assignments, and the homeowners' default exposed them to foreclosure regardless of which party actually proceeded with foreclosure." *Locke* at ¶ 29.

{¶ 17} This court followed *Locke* in *Deutsche Bank Natl. Trust. Co. v. Whiteman*, 10th Dist. No. 12AP-536, 2013-Ohio-1636, observing that *Locke* established that "because a debtor is not a party to the assignment of a note and mortgage, the debtor lacks standing to challenge their validity." *Whiteman* at ¶ 16. The court further acknowledged that there was no dispute between the original mortgagee and the entity subsequently named as an

assignee of the note and mortgage as to the identity of the holder of the note and the mortgage. Rather, only the borrower challenged the assignment's validity, and there was no dispute that the borrower had defaulted on his loan and was subject to foreclosure. *Id.*

{¶ 18} The trial court correctly applied the precedent this court established in *Locke and Whiteman*. It therefore did not err in holding that appellant lacked standing to enforce the assignment because appellant was not a party to the assignment. Accordingly, we overrule appellant's second assignment of error.

{¶ 19} In his first assignment of error, appellant argues that Chase lacked standing to seek foreclosure of the mortgage. Appellant contends that the undisputed evidence justifies the legal conclusion that Chase had assigned its interests under the mortgage to Fannie Mae and that Chase therefore was not the real party in interest with standing to assert the right of foreclosure established by the mortgage.

{¶ 20} Our disposition of appellant's second assignment of error renders moot appellant's first assignment of error. Notwithstanding, we find appellant's arguments in support of his first assignment of error to be unpersuasive.

{¶ 21} Appellant bases his argument on the November 27, 2002 assignment of mortgage to Fannie Mae contained in Chase's records.<sup>2</sup> But appellant provided no evidence to rebut the testimony of Chase's employee, Frank Dean, that Chase had never legally assigned the note and mortgage to any other financial entity. Indeed, appellant acknowledges that the purported mortgage assignment was "never actually delivered to Fannie Mae." (Appellant's Brief, 6.) The absence of delivery of the assignment to Fannie Mae defeats appellant's argument.

{¶ 22} It has long been recognized, and is well-established, that an executed document of conveyance that is never delivered is a "mere nullity." *Williams v. Schatz*, 42 Ohio St. 47, 50 (1884). In *Williams*, the court recognized that "[a]n instrument may be in the form of a deed; it may be properly signed, sealed, witnessed, acknowledged and recorded; the grantor may have capacity to convey, and the grantee to receive and hold the title; the transaction may be free from fraud or mistake; nevertheless, the instrument will not take effect as a deed *unless it is delivered.*" (Emphasis added.) *Id.* More recently, this

<sup>2</sup> The record reveals that appellant became aware of the undelivered, unrecorded assignment because Chase had attached it as part of an exhibit in an earlier mortgage foreclosure action, which Chase ultimately voluntarily dismissed.

court in 1981 relied on *Williams* in recognizing that a quitclaim deed executed by the owner of real property, but kept in the owner's possession and never delivered to the grantee, did not legally transfer ownership to the grantee. *See also Gatts v. E.G.T.G., GMBH*, 14 Ohio App.3d 243, 245 (11th Dist.1983) ("It is fundamental under Ohio law that recording is not necessary to give validity to instruments of conveyance. However, it is equally basic that delivery is an essential requirement of instruments of conveyance, as well as their acceptance, for purpose of passing title.").

{¶ 23} Accordingly, a document of conveyance of an interest in real property, even if fully executed and notarized, takes legal effect only upon delivery. *See Leonard v. Kebler's Admr.*, 50 Ohio St. 444, 453 (1893) (" 'Delivery is the final step necessary to perfect the existence of any written contract.' " [Citation omitted.]). While a written legal conveyance has no legal effect until delivery, "no particular form or ceremony is essential to constitute delivery; it need not be manual; it may be made by words and acts, or either, if accompanied with intention that they shall have that effect; it may be made by the grantor personally, or through his agent, to the grantee, either personally or through his agent; and it may be made *in escrow*, or to take effect immediately." (Emphasis sic.) *Williams* at 50. Delivery to the appropriate governmental office for recordation constitutes prima facie evidence of delivery to the grantee. *Gatts* at 246. As recognized by the court in *Gatts*, "A deed is effective for purposes of passing title at the time when delivery and acceptance are completed." *Id.*, citing *Baldwin v. Bank of Massillon*, 1 Ohio St. 141 (1853). In addition, an effective delivery of a deed requires an acceptance on the part of the grantee, coupled with the mutual intent of the parties to pass title. *Kinasz-Reagan v. Ohio Dept. of Job & Family Servs.*, 164 Ohio App.3d 458, 2005-Ohio-5848 (8th Dist.). "The general rule is that delivery is required to give effect to a mortgage, as well as acceptance." *Gatts* at 246.

{¶ 24} The premise that delivery of a conveying instrument is required to effect a transfer of property rights is applicable to cases involving assignments of notes and mortgages as well as deeds. In *Leonard*, the Supreme Court of Ohio expressly provided in the first paragraph of the syllabus of the decision that "[d]elivery is esstential to the validity of an assignment." Absent evidence of either actual or constructive delivery, through recordation or otherwise, of the assignment to Fannie Mae, the assignment in this

case was a nullity. Appellant acknowledged that the assignment was never delivered to Fannie Mae nor recorded. He offered no other evidence to support his contention that Fannie Mae, rather than Chase, was the real party in interest to enforce the provisions of the note and mortgage that Romine had executed.

{¶ 25} Appellant further argues that R.C. 5301.01 and 5301.32 justify the conclusion that the assignment "was effective the moment it was executed and acknowledged by the vice president and certified by the notary who took the acknowledgement." (Appellant's reply brief, 7.) Those statutory sections establish that an assignment shall, inter alia, be signed by the grantor; acknowledged by an official listed in R.C. 5301.01(A) ( including notaries public); and recorded. The statutes do not, however, affect existing law requiring delivery and acceptance of instruments of real property conveyance as the final step in accomplishing a conveyance, nor do they otherwise purport to establish the time at which an assignment legally occurs. Moreover, were we to accept appellant's argument that the signing and acknowledgement of a conveying instrument is itself sufficient to immediately transfer the real estate interests described in the instrument, we would effectively destroy the legal foundation of the use of escrow in connection with real estate transactions. *See generally* Ohio Jurisprudence 3d, Deeds, Sections 68-70, at 288-90 (2002).

**Conclusion**

{¶ 26} For the foregoing reasons, we overrule appellant's second assignment of error but render his first assignment of error moot. We therefore affirm the judgment of the Franklin County Court of Common Pleas.

*Judgment affirmed.*

BROWN and CONNOR, JJ., concur.

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