

ORIGINAL

IN THE SUPREME COURT OF OHIO

JPMORGAN CHASE BANK, N.A., SUCCESSOR :  
 BY MERGER TO CHASE HOME FINANCE :  
 LLC, SUCCESSOR BY MERGER TO CHASER : CASE No. 2013-1763  
 MANHATTAN MORTGAGE CORPORATION, :  
 :  
 :  
 APPELLEE, : APPEAL FROM THE TENTH DISTRICT COURT  
 : OF APPEALS,  
 v. : CASE No. 13AP-58  
 :  
 ROMINE, ET AL.; : FRANKLIN COUNTY COURT OF COMMON  
 : PLEAS  
 URBANSKI, AS TRUSTEE OF THE 424 : CASE No. 11CV-06-6894  
 STONECROP COURT TRUST, :  
 :  
 APPELLANT. :

MEMORANDUM OF APPELLEE OPPOSING JURISDICTION

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**THIS CASE DOES NOT PRESENT A SUBSTANTIAL CONSTITUTIONAL QUESTION  
AND IS NOT OF PUBLIC OR GREAT GENERAL INTEREST**

This is a mortgage foreclosure action in which Plaintiff-Appellee JPMorgan Chase Bank, N.A., successor by merger to Chase Home Finance LLC, successor by merger to Chase Manhattan Mortgage Corporation, (“Chase”), prevailed on summary judgment and obtained a judgment in foreclosure against the mortgagor/defendant, Appellee Raymond E. Romine (“Romine”), as well as against the title holder of the property in question, Appellant Brian K. Urbanski, as Trustee of the 424 Stonecrop Court Trust, (“Urbanski”). Urbanski argued below and now asks this Court to review his assertion that Chase lacked standing to enforce the note and mortgage because of an executed but unrecorded and undelivered mortgage assignment from Chase to Federal National Mortgage Association (“Fannie Mae”) that was produced by Chase in discovery. For a number of reasons, this case and the proposition of law advanced by Urbanski do not warrant this Court’s attention.

As an initial matter, on February 20, 2013, this Court declined to accept jurisdiction to address the very question ostensibly presented in this appeal—whether defendants to a foreclosure action can challenge an assignment to which they are not a party—in the case of *LSF6 Mercury REO Investments Trust Series 2008-1 c/o Verierest Financial, Inc. v. Locke*, Case No. 2012-1926. In the intervening ten months, nothing about the public interest or the state of the law in Ohio has changed that would justify this Court coming to a different conclusion now. Indeed, contrary to Urbanski’s suggestion of a split in authority among the various appellate districts, Ohio courts uniformly and correctly have held that a non-party to a mortgage assignment has no legal standing to challenge or enforce it against a party to the putative assignment. There is no need for this Court to address a question that has been answered consistently and correctly by all Ohio courts that have considered it.

Moreover, this Court should not address the proposition of law in question, since Urbanski was, in fact, given the opportunity to litigate the validity of the undelivered assignment in the trial court below. Indeed, the Tenth District's opinion affirming the decision of the trial court was supported by the undisputed factual record, wherein it was established that the assignment Urbanski sought to enforce against Chase was never delivered to Fannie Mae, and thus, as a matter of law, was a mere legal nullity. The question of standing to challenge or enforce the putative assignment is, therefore, a moot point. That is, Urbanski was given the opportunity to develop a factual record to support his contention, but he failed to do so. Thus, even if he had standing to challenge—or in this case to enforce—an assignment to which he is not a party, an answer to the legal question presented can have no bearing on the outcome of this case, and thus is not a proper subject of review by this Court. That Chase established below its own holder status with respect to the note, thereby conferring standing upon it independently of the mortgage—which Urbanski does not challenge here—only reinforces this conclusion.

Finally, even if Urbanski had properly placed the issue for review before this Court, the idiosyncratic facts of this case—specifically, the existence of an unrecorded and undelivered assignment of mortgage—would render a decision by this Court of exceedingly narrow and limited application. While acknowledging that the issue presented is “largely factual and dependent on the nature of each individual case,” Urbanski's attempt to generalize the proposition of law in order to render it of greater public or general interest ignores the reality that, if this Court were to accept jurisdiction, its review would be limited to very specific facts and legal questions posed by Urbanski's defense. Apart from that defense being without any merit, it is not of any particular public or general interest, even in the specific context of foreclosure litigation.

**BRIEF ARGUMENT IN RESPONSE TO PROPOSITIONS OF LAW**

**I. Appellants' 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*, 11t 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.

**A. Urbanski Lacks Standing to Seek to Enforce the Undelivered Assignment.**

Urbanski's Proposition of Law No. 1 bears little resemblance to his actual argument. Nonetheless, he appears to be asking the Court to accept jurisdiction in order to decide “whether or not defendants to a foreclosure action can challenge an assignment's validity.” Urbanski Memo, p. 1. Urbanski contends that a split in authority exists on the issue and that, because this Court's decision in *Federal Home Loan Mort. Corp. v. Schwartzwald*, 134 Ohio St.3d 13, 2012-Ohio-5017 requires a plaintiff in a foreclosure action to have standing as of the date of the initiation of the action, defendants who are not parties to an assignment of mortgage must have the legal right to challenge or enforce such assignments against the plaintiff in order to defeat standing. Urbanski's argument fails for at least three reasons.

First, contrary to Urbanski's suggestion that there is “great conflict” among Ohio courts on the issue, there is, in fact, complete consensus in Ohio appellate courts that a foreclosure defendant who is not a party to an assignment of mortgage has no standing to challenge or

enforce it, in part because the assignment has no bearing on the defendant's obligations that have given rise to the foreclosure action in the first place. *See, e.g., Deutsche Bank Nat'l Trust Co. v. Newble*, 8th Dist. Cuyahoga No. 99372, 2013-Ohio-5019; *PHH Mortgage Corp. v. Unknown Heirs, Devisees, Legatees of Delores K. Cox*, 2nd Dist. Montgomery No. 25617, 2013-Ohio-4614; *Bank of America, N.A. v. Hizer*, 6th Dist. Lucas No. L-13-1035, 2013-Ohio-4621; *JPMorgan Chase Bank, N.A. v. Romine*, 10th Dist. Franklin No. 13AP-58, 2013-Ohio-4212; *Waterfall Victoria Master Fund Ltd. v. Yeager*, 11<sup>th</sup> Dist. Lake No. 2012-L-071, 2013-Ohio-3206; *U.S. Bank, N.A. as Trustee v. Armstrong*, 6th Dist. Wood Nos. WD-12-031, 2013-Ohio-2130; *Deutsche Bank Nat'l Trust Co. v. Najar*, 8th Dist. Cuyahoga No. 98502, 2013-Ohio-1657; *Deutsche Bank Nat'l Trust Co., as Trustee v. Whiteman*, 10th Dist. Franklin No. 12AP-536, 2013-Ohio-1636; *Deutsche Bank Nat'l Trust Co. v. Rudolph*, 8th Dist. Cuyahoga No. 98383, 2012-Ohio-6141; *LSF6 Mercury REO Investments Trust Series 2008-1 c/o Vericrest Financial, Inc. v. Locke*, 10th Dist. Franklin No. 11AP-757, 2012-Ohio-4499; *The Bank of New York Mellon Trust Co., N.A. v. Unger*, 8th Dist. Cuyahoga No. 97315, 2012-Ohio-1950; *Chase Home Finance LLC v. Heft*, 3rd Dist. Logan Nos. 8-10-14 and 8-11-16, 2012-Ohio-876.

Chase is aware of no Ohio court—and Urbanski identifies none—that has held that a non-party to an assignment of mortgage, whose substantive rights and obligations are not impacted by the assignment of mortgage, nonetheless has standing to challenge its validity or to seek enforcement of it against a foreclosing plaintiff. The reasoning of Ohio's appellate courts behind this statement of Ohio law—that the assignment has no bearing on the substantive rights and obligations of the defendant under the mortgage itself—is even more compelling in the present case, since Urbanski is not even a party to the mortgage, but instead is merely the title holder to the property. *Romine* at ¶ 3.

Second, as Ohio's appellate courts have recognized, this Court's decision in *Schwartzwald* does not alter this analysis. *See, e.g., PHH Mortgage* at ¶ 8; *Waterfall Victoria* at ¶¶ 15-23; *Whiteman* at ¶ 29. The fact that standing in a foreclosure action is jurisdictional, which was the question answered by the Court in *Schwartzwald*, does not give rise to rights to challenge or enforce conveyances to which one is not a party and in which one has no interest. This is especially true in the present case, where Urbanski is not even challenging the validity of an assignment upon which Chase's standing is based. Rather, he is attempting to assert that, despite the record title explicitly showing that Chase is in fact the holder of the mortgage, a document produced in discovery purporting to be an assignment but accompanied by no evidence that the parties thereto ever intended it to actually effectuate a transfer of the interest and testimony directly refuting the suggestion, can nonetheless be held against the foreclosing plaintiff as a binding transfer of the interest by one who is not even a party to the mortgage contract itself, let alone to the putative assignment. *Romine* at ¶ 10. Nothing in Ohio law, including *Schwartzwald*, supports this conclusion.

Even more, in this case Chase was found to have been the holder of the note. *Romine* at ¶ 10. Urbanski did not challenge this conclusion below. Regardless of the mortgage assignment, Chase's holder status with respect to the note conferred standing on Chase to foreclose, since Ohio law plainly provides that a mortgage automatically follows the note it secures, and that the note is the evidence of the debt, while the mortgage is merely incident thereto. *See, e.g., PHH Mortgage* at ¶ 7; *Armstrong* at ¶ 16; *Najar* at ¶ 65. Indeed, Urbanski effectively concedes the point. *See, e.g., Urbanski Memo*, pp. 4-5 (citing *Carpenter v. Longan*, 83 U.S. 271, 274 (1872)) for the proposition that "[a]n assignment of the note carries the mortgage with it"). Moreover, the fact that Urbanski seeks in this case to *enforce* rather than *challenge* a putative assignment

does not affect the analysis. The undisputed fact is that Chase was the holder of the note, which conferred standing upon it sufficient to invoke the jurisdiction of the Court. *Schwartzwald* does not require more, and it certainly does not dictate that foreclosure defendants now have the right to challenge or enforce assignments (or any other third-party agreements, for that matter) to which they are not a party and that have no impact on their own rights or obligations.

**B. The undelivered assignment is a legal nullity in any event.**

The undisputed factual record, which demonstrates that the assignment was never delivered to the putative assignee, renders the assignment a legal nullity thereby precluding Urbanski's defense from succeeding in any event. *Romine* at ¶¶ 21, 24. This is true regardless of whether he is legally entitled to seek to enforce the unrecorded and undelivered assignment against Chase in the first place. Indeed, it is precisely because Urbanski was given the opportunity to discover and present facts in support of his position in the trial court that the record now reflects that the assignment was never delivered to Fannie Mae. It is from these undisputed facts that the trial court concluded and the Tenth District affirmed that the assignment is a nullity and that Chase did indeed have standing to foreclose. *Id.* at ¶ 24. Because Urbanski has not appealed this aspect of the Tenth District's decision or challenged Ohio law providing that an undelivered assignment of mortgage is not legally effective, an answer to the question posed by Urbanski in his Proposition of Law No. 1 will have no impact on the outcome of this case.

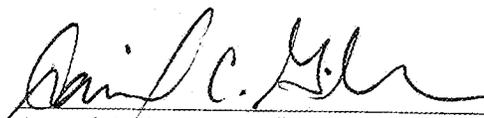
Specifically, this Court has held that the failure to deliver a fully executed document of conveyance precludes it from "tak[ing] effect..." and that "[d]elivery is the final step necessary to perfect the existence of any written contract," including an assignment. *Williams v. Schatz*, 42 Ohio St. 47, 50 (1884); *Leonard v. Kebler's Admr.*, 50 Ohio St. 444, 453 (1893). Urbanski conceded below that the putative assignment to Fannie Mae was never delivered. *Romine* at

¶ 21. As a result, the assignment was a “mere nullity” and there was no basis for the trial court or the Tenth District to conclude that Fannie Mae, as opposed to Chase, held title to the mortgage. Even if Urbanski were to prevail upon this Court to completely reverse the course of Ohio law and hold that defendants do have standing to challenge assignments to which they are not a party, that conclusion would not alter the outcome of this case, since the very assignment Urbanski seeks to enforce against Chase is not, as a matter of law, legally effective. This Court should not accept jurisdiction to issue an advisory opinion on an issue of no general interest to the public and that has been rendered completely moot by the disposition of Urbanski’s defense on other grounds not appealed to this Court.

### CONCLUSION

Urbanski has failed to demonstrate that this case is of public or great general interest or that a substantial constitutional issue is involved. Based on the underlying facts and the relevant law, the trial court did not err in granting Chase summary judgment. This Court should decline jurisdiction.

Respectfully submitted,



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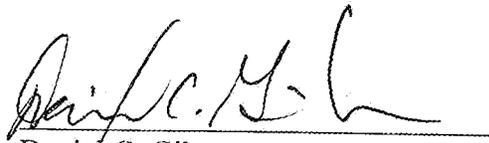
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**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that a copy of the foregoing MEMORANDUM OF APPELLEE OPPOSING JURISDICTION was served upon the following by regular U.S. mail, postage prepaid, on December 9, 2013:

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