IN THE SUPREME COURT OF OHIO

DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE FOR SOUNDVIEW HOME LOAN TRUST 2005-4, ASSET-BACKED CERTIFICATES, SERIES 2005-4,	* * * * *	**Case No. 2014-0791** **On Appeal from the Summit County Court of Appeals, Ninth Appellate District**
Plaintiff-Appellant,	* * *	**Court of Appeals Case No. CA-26970**
v.	* *	
GLENN E. HOLDEN, *et al.*,	* *	
Defendants-Appellees.	*	

REPLY BRIEF OF PLAINTIFF-APPELLANT DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE FOR SOUNDVIEW HOME LOAN TRUST 2005-4, ASSET-BACKED CERTIFICATES, SERIES 2005-4

Terry W. Posey, Jr. (#0078292) (COUNSEL OF RECORD)
Terry.Posey@ThompsonHine.com
THOMPSON HINE LLP
10050 Innovation Drive, Suite 400
Miamisburg, Ohio 45342-4934
Telephone: (937) 443-6857
Facsimile: (937) 443-6635

Richard A. Freshwater (#0080762)
Richard.Freshwater@ThompsonHine.com
Stephen D. Williger (#0014342)
Stephen.Williger@ThompsonHine.com
THOMPSON HINE LLP
3900 Key Center, 127 Public Square
Cleveland, Ohio 44114
Telephone: (216) 566-5500
Facsimile: (216) 566-5800
Attorneys for Plaintiff-Appellant

Marc E. Dann (#0039425)
mdann@dannlaw.com
Grace Doberdruk (#0085547)
grace@dannlaw.com
DANN, DOBERDRUK & HARSHMAN
4600 Prospect Avenue
Cleveland, Ohio 44103
Telephone: (216) 373-0539
Facsimile: (216) 373-0536
Attorney for Defendants-Appellees

TABLE OF CONTENTS

Page(s)

Table of Contents i

Table of Authorities ii

I. Introduction. 1

II. Background. 2

III. Discussion. 3

A. DBNTC's arguments are properly before the Court. 3

B. The cases cited by the Holdens are inapplicable. 4

C. The mortgagee of record has enforceable rights. 7

D. Standing to foreclose is plainly present when the mortgagee files the complaint. 7

E. The presumptions created by the Restatement of Property § 5.4 demonstrate that standing exists through evidence of standing to enforce the note or mortgage. 9

F. There is no potential harm from adopting the proposition of law. 10

IV. Conclusion. 11

Certificate of Service 12

TABLE OF AUTHORITIES

Page(s)

Cases

BAC Home Loan Servicing v. Blythe,
7th Dist. Columbiana No. 12-CO-12, 2013-Ohio-5775 6

Bank of Am., N.A. v. Kuchta,
141 Ohio St.3d 75, 2014-Ohio-4275, 21 N.E.3d 1040 9

Bank of N.Y. Mellon v. Grund,
11th Dist. Lake No. 2014-L-025, 2015-Ohio-466 10

Bank of New York v. Dobbs,
5th Dist. Knox No. 2009-CA-000002, 2009-Ohio-4742 10

Bradfield v. Hale,
67 Ohio St. 316, 65 N.E. 1008 (1902) 7

Chase Home Fin., LLC v. Dunlap,
4th Dist. Ross No. 12CA3409, 2014-Ohio-3484 10

CitiMortgage v. Patterson,
8th Dist. Cuyahoga No. 98360, 2012-Ohio-5894 4

State ex rel. Dallman v. Franklin Cty. Court of Common Pleas,
35 Ohio St.2d 176, 298 N.E.2d 515 (1973) 8

Deutsche Bank Natl. Trust Co. v. Thomas,
10th Dist. Franklin No. 14AP-809, 2015-Ohio-4037 5

Deutsche Bank Natl. Trust Co. v. Holden,
9th Dist. Summit No. 26970, 2014-Ohio-1333 1

Deutsche Bank Natl. Trust v. Brumbaugh,
2012 OK 3, 270 P.3d 151.....4

Edgar v. Haines,
109 Ohio St. 159, 141 N.E. 837 (1923) 7

Fannie Mae v. Hicks,
8th Dist. Cuyahoga No. 102079, 2015-Ohio-1955 5

Fed. Home Loan Mtge. Corp. v. Schwartzwald,
134 Ohio St.3d 13, 2012-Ohio-5017, 979 N.E.2d 1214 .....1, 4, 8, 9

Fed. Home Loan Mtge. Corp. v. Trissell,
2d Dist. Montgomery No. 25935, 2014-Ohio-1537 10

Fisher v. Mossman,
11 Ohio St. 42 (1860).....7

Huntington Natl. Bank v. Payson,
2nd Dist. Montgomery No. 26396, 2015-Ohio-1976 5

McLean v. JP Morgan Chase Bank Natl. Assn.,
79 So.3d 170 (Fla.App. 2012).....4

Ohio Pyro, Inc. v. Ohio Dep't. of Commerce,
115 Ohio St.3d 375, 2007-Ohio-5024, 875 N.E.2d 550 9

RMS Residential Properties, L.L.C. v. Miller,
303 Conn. 224, 32 A.3d 307 (2011) 4

U.S. Bank Natl. Assn. v. Kimball,
190 Vt. 210, 2011 VT 81, 27 A.3d 1087 4

Washer v. Tontar,
128 Ohio St. 111, 190 N.E. 231 (1934) 7

Weaver v. Bank of New York Mellon,
10th Dist. Franklin No. 11AP-1065, 2012-Ohio-4373 7

Statutes/Other Authorities

R.C. 1303.31 3

R.C. 1303.38 .....5, 11

R.C. 1303.67 (U.C.C. § 3-602) 10

R.C. 2329.191 10

11 U.S.C. 524.....8

Restatement of Property 3d § 5.4.....9

I. Introduction

In this case, Plaintiff-Appellant DBNTC received summary judgment in its *in rem* foreclosure action against Defendants-Appellees Glenn and Ann Holden. The Ninth District Court of Appeals reversed. *Deutsche Bank Natl. Trust Co. v. Holden*, 9th Dist. Summit No. 26970, 2014-Ohio-1333 (the "Opinion").

It is undisputed that DBNTC was the recorded mortgagee at the time it filed the Complaint. In its Complaint, DBNTC did not seek a judgment on the Note, but only sought to enforce the Mortgage, because Glenn Holden (as the only party indebted under the promissory note) had extinguished the underlying debt in bankruptcy.

In the Opinion, the Ninth District found that a genuine issue of material fact existed as to DBNTC's standing because of a difference in the copy of the promissory note ("Note") attached to the Complaint and the original Note presented at summary judgment. Despite the undisputed testimony that DBNTC had possessed the Note, indorsed, since 2005, the Ninth District concluded that because the copy attached to the Complaint lacked the indorsement contained on the original, there was a genuine issue of material fact regarding whether DBNTC had the right to enforce the Note at the time it filed the Complaint. Because the reversal was premised on the DBNTC's rights at the time of filing the Complaint, this is plainly a **standing** question pursuant to *Fed. Home Loan Mtge. Corp. v. Schwartzwald*, 134 Ohio St.3d 13, 2012-Ohio-5017, 979 N.E.2d 1214. Indeed, the Opinion relies on *Schwartzwald* in its reversal.

In its initial Merits Brief, DBNTC pointed out that a mortgage is separately enforceable from a promissory note, especially, when the note has been discharged in bankruptcy and is no longer enforceable. In addition, DBNTC pointed to the wealth of case law and secondary

authority supporting the contention that **standing** can be demonstrated through a right to enforce either the note or mortgage.

The Holdens filed their responsive brief, which misconstrues and misaddresses the issues. No case cited by the Holdens addresses the standing question in the context of a note discharged in bankruptcy. Moreover, most of the cases cited by the Holdens for the concept of "note and mortgage" as opposed to "note or mortgage" involves the issue of **enforceability** (i.e. the proof required at the time of judgment), not standing (i.e. evidence of injury at the time the complaint was filed). Enforceability and standing are two entirely different issues.

The Holdens and the Ninth District are incorrect for two reasons. For standing to exist, a party need only have rights to enforce the note or mortgage at the time it files the complaint. Second, and as discussed in DBNTC's Merits Brief, being a party entitled to enforce the note or mortgage brings with it a presumption of the right to enforce the other. If that presumption were utilized, the Opinion is separately wrong.

II. Background

It is worth reiterating the following undisputed facts:

- After making their first payment to NovaStar Mortgage, the Holdens made their second payment to JPMorgan Chase Bank, N.A. ("Chase") in December of 2005 in its capacity as the servicer for DBNTC. Deposition of Ann Holden, p. 33 ("Ann Depo."); Affidavit of Megan Theodoro, ¶¶ 7-8 ("Aff."), attached to DBNTC's Motion for Summary Judgment. Since that date, the Holdens only made payments to Chase in its capacity as servicer for DBNTC. Ann Depo., pp. 33-34; Aff. Exh. A-5.
- No third party has claimed an interest in the loan, even though no payments have been made since 2009. Ann Depo., p. 47; Aff. at ¶ 10, Aff. Exh. A-5.

- DBNTC was the recorded mortgagee at the time it filed the Complaint on August 12, 2011 and had been since September 28, 2010 Aff. at ¶ 5, Aff. Exh. A-3.
- The indebtedness under the Note was discharged in bankruptcy in 2010.
- The Holdens had not made any payments required under the Note (principal and interest) or Mortgage (taxes and insurance) since February 2010 (Aff. Exh. A-5).
- The original Note, indorsed in blank, was in the record as part of the summary judgment evidence (Deposition of Frank Dean, pp. 37, 45; Ann Depo., pp. 25-26; Deposition of Glenn Holden, pp. 26-27).
- The Complaint did not seek a personal judgment on the Note. Complaint, ¶ 9 ("Plaintiff is not seeking a personal judgment against the foregoing defendant but is seeking instead to enforce its security interest").
- DBNTC sought to recover over $4,000 worth of advances made for taxes and insurance, made solely pursuant to the terms of the Mortgage (Aff. Exh. A-5), and was awarded those amounts through summary judgment.

III. Discussion

A. DBNTC's arguments are properly before the Court.

At page 10 of the Holdens' Brief, they contend that the argument that DBNTC was a "non-holder in possession" of the Note pursuant to R.C. 1303.31 was waived, as discussed in the Opinion, and therefore cannot be raised here. DBNTC is not arguing that it is a non-holder in possession (and in fact, the phrase does not appear in its Merits Brief).

DBNTC is arguing, as it did before the Ninth District, that its status as the Mortgagee is sufficient to allow it to enforce the Mortgage (and recover the amounts due under the Note). *See e.g.* DBNTC 9th Dist. Brief, 5 ("plaintiff need only demonstrate through summary judgment

evidence that it had the rights to enforce either the note or the mortgage at the time the suit was filed" (citing *CitiMortgage v. Patterson*, 8th Dist. Cuyahoga No. 98360, 2012-Ohio-5894, ¶¶ 21-22)).

The arguments presented in DBNTC's Merits Brief were plainly presented before the Ninth District. Res judicata is not a bar.

B. The cases cited by the Holdens are inapplicable.

The Holdens' lengthy brief and numerous case citations conflate the issues before the Court in two respects. First, none of the cases they cite deal with the issue of when the promissory note had been discharged in bankruptcy, rendering them inapposite to this factual scenario. Second, the majority of the cases cited for the proposition that an interest in the note and mortgage must be demonstrated, are all in the **enforcement** context, not the **standing** context. Consequently, they are without legal support for their position.

The Holdens' make much of the citations to court cases from Oklahoma, Vermont, Maine, Connecticut, and Florida in paragraph 27 of *Schwartzwald*. *Id.*, citing *Deutsche Bank Natl. Trust v. Brumbaugh*, 2012 OK 3, 270 P.3d 151, ¶ 11; *U.S. Bank Natl. Assn. v. Kimball*, 190 Vt. 210, 2011 VT 81, 27 A.3d 1087, ¶ 14; *RMS Residential Properties, L.L.C. v. Miller*, 303 Conn. 224, 229, 232, 32 A.3d 307 (2011); *McLean v. JP Morgan Chase Bank Natl. Assn.*, 79 So.3d 170, 173 (Fla.App. 2012), for the proposition that a party seeking to foreclose a mortgage must demonstrate standing to enforce the promissory note at issue. However **every** single one of those cases involves an action to obtain judgment on the promissory note as well. None of those cases involve only seeking to foreclose the mortgage.

Again, the Holdens cite *Fannie Mae v. Hicks*, 8th Dist. Cuyahoga No. 102079, 2015-Ohio-1955, for the proposition that an interest in the note and the mortgage is required to obtain

judgment. Brief, 13-14. But *Hicks* again involved a scenario where the plaintiff was seeking judgment on both the note and the mortgage. 2015-Ohio-1955, ¶ 5. *Hicks* actually supports DBNTC. In that case, the Eighth District found the fact that Fannie Mae possessed an interest in the mortgage gave it standing on its own. *Id.*, ¶ 20. However, the plaintiff failed to prove it was entitled to enforce the note, because it did not demonstrate it was entitled to enforce the note when it lost it, as required by R.C. 1303.38. *Id.*, ¶ 26 ("in Ohio, a party is not entitled to enforce a lost note unless it was entitled to enforce the instrument when the loss occurred"). Here, the original Note was introduced in three separate depositions and was indorsed in blank. There is no dispute DBNTC presented evidence it was entitled to enforce the Note at the time it filed for summary judgment.

The other cases cited by the Holdens fare no better. In *Deutsche Bank Natl. Trust Co. v. Thomas*, 10th Dist. Franklin No. 14AP-809, 2015-Ohio-4037, ¶ 19, the Tenth District determined that the affidavit was insufficient to demonstrate that the plaintiff "possessed" the note – a requirement of being a party entitled to enforce it. Here, it is plain that DBNTC possessed the note, indorsed in blank, at the time it sought judgment. Even if it were discussing standing, *Thomas* involved a scenario in which the plaintiff was seeking judgment on the note and the mortgage. *Id.*, ¶ 3.

In *Huntington Natl. Bank v. Payson*, 2nd Dist. Montgomery No. 26396, 2015-Ohio-1976, the Second District was discussing the requirements for summary judgment in an action to **enforce** the note and mortgage, not standing. *Id.*, ¶ 15 ("To properly support a motion for summary judgment in a foreclosure action . . ."). Again, the plaintiff was seeking "to enforce the note and foreclose on the mortgage." *Id.*, ¶ 3.

Identically, in *BAC Home Loan Servicing v. Blythe*, 7th Dist. Columbiana No. 12-CO-12, 2013-Ohio-5775, ¶ 19, the Seventh District found that the plaintiff's right to enforce the note was barred by a failure to authenticate an enforceable copy. There was no discussion of a plaintiff's standing.

The Holdens cite a litany of cases on pages 24-30 of their Brief, from Connecticut, Florida, Hawaii, Illinois, Indiana, Kansas, Kentucky, Maine, New Mexico, New York, Oklahoma, South Carolina, Vermont, and Wisconsin, all for the proposition that a party is required to demonstrate standing to enforce the note and the mortgage. To whatever precedential value those have to these circumstances (which is minimal), none address the condition here: the note was discharged in bankruptcy.

In short, the Holdens argument that evidence of standing to enforce the note **and** mortgage is required suffers from two main failures. First, and dispositively, they fail to acknowledge that most of the cases cited are where the plaintiff has failed to introduce evidence of a "right to enforce" the note at the time of judgment. That is not the case here. The record is clear: DBNTC possessed the Note prior to judgment, indorsed in blank.[1]

Second, to the extent that some of the precedent cited does address the issue of whether standing must exist through the note and mortgage, **not a single case** involves a scenario where the plaintiff had sued *in rem* to foreclose a mortgage where the indebtedness had been extinguished in bankruptcy. There simply is no law (aside from the Opinion and prior Ninth District precedent) holding that a party seeking only to foreclose a mortgage must demonstrate standing to enforce the note at the time of filing.

[1] DBNTC would also argue the evidence demonstrated that it possessed the Note indorsed in blank since 2005 – but this is not a Court of error correction.

C. The mortgagee of record has enforceable rights.

In its Merits Brief, DBNTC pointed out that the assignee of the mortgage may be able to enforce the mortgage, even if the note is unenforceable. *Bradfield v. Hale*, 67 Ohio St. 316, 321-24, 65 N.E. 1008 (1902) (mortgagee can bring action to enforce the mortgage, even where the note is barred); *Fisher v. Mossman*, 11 Ohio St. 42, 45-46 (1860) (where an action can no longer be brought upon the note, the mortgage may be enforced if brought within the statute of limitations for enforcing mortgages); *Weaver v. Bank of New York Mellon*, 10th Dist. Franklin No. 11AP-1065, 2012-Ohio-4373, ¶¶ 9, 14 (*in rem* action to proceed on mortgage may proceed even if the *in personam* claim on the note is barred).

In response, the Holdens do not contradict this precedent, but instead cite *Washer v. Tontar*, 128 Ohio St. 111, 190 N.E. 231 (1934) and *Edgar v. Haines*, 109 Ohio St. 159, 164, 141 N.E. 837 (1923). Both just stand for the generic and related proposition that the mortgage is an incident to the debt.

D. Standing to foreclose is plainly present when the mortgagee files the complaint.

Here, DBNTC plainly demonstrated: (1) it was the recorded mortgagee; (2) the Holdens were in default of obligations created by the mortgage (regarding property taxes and insurance); (3) the Holdens were in default of the obligations created by the Note, and had discharged the Note's indebtedness in bankruptcy. These facts were not the subject of contrary evidence and are not subject to dispute.

At the time it filed the Complaint, DBNTC had advanced over $4,000 for the Holdens' failure to pay for taxes and insurance as provided in ¶ 3 of the Mortgage (if "Borrower fails to pay the amount due for an Escrow Item [taxes, insurance], Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay *

* *"). Section 9 of the Mortgage states "[a]ny amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument [e.g., mortgage]." The Holdens owed DBNTC over $4,000 for advances made to pay the Holdens' taxes and insurance, **solely** under the terms of the Mortgage.

Indeed, after making their first payment on the loan to the original lender, NovaStar Mortgage, the Holdens made their second payment to Chase in December of 2005 in its capacity as the servicer for DBNTC. Ann Depo., p. 33; Aff., ¶¶ 7-8. Since that date, the Holdens only made payments to Chase in its capacity as servicer for DBNTC. Ann Depo., pp. 33-34; Aff. Exh. A-5. Chase provided testimony it has serviced the loan for DBNTC since that time. No one else has claimed an interest in the loan, even though no payments have been made since 2009. *Id.*, p. 47; Aff. at ¶ 10, Aff. Exh. A-5.

DBNTC also alleged, and demonstrated prior to judgment, it possessed the Note indorsed in blank. However, it did not seek a personal judgment, as the debt evidenced by the Note had been discharged and could not personally be collected. Indeed, had DBNTC filed a complaint with only the Note attached and sought to recover the balance owed, the Complaint would almost certainly have been dismissed, and DBNTC would have violated the bankruptcy discharge pursuant to 11 U.S.C. 524.

In *Schwartzwald*, this Court acknowledged "It is an elementary concept of law that a party lacks standing to *invoke the jurisdiction* of the court unless he has, in an individual or representative capacity, some real interest in the subject matter of the action." *Id.*, ¶ 22; quoting *State ex rel. Dallman v. Franklin Cty. Court of Common Pleas*, 35 Ohio St.2d 176, 179, 298 N.E.2d 515 (1973) (emphasis in original).

"A determination of standing necessarily looks to the rights of the individual parties to bring the action, as they must assert a *personal* stake in the outcome of the action in order to establish standing." *Bank of Am., N.A. v. Kuchta*, 141 Ohio St.3d 75, 2014-Ohio-4275, 21 N.E.3d 1040, ¶ 22 (emphasis in original) (citing *Ohio Pyro, Inc. v. Ohio Dep't. of Commerce*, 115 Ohio St.3d 375, 2007-Ohio-5024, 875 N.E.2d 550, ¶ 27).

The Court in *Schwartzwald* determined that standing failed because "there is no evidence that [the plaintiff] had suffered any injury at the time it commenced this foreclosure action. Thus, because it failed to establish an interest in the note or mortgage at the time it filed suit, it had no standing to invoke the jurisdiction of the common pleas court." *Id.*, ¶ 28.

It is plain that *Schwartzwald* standing exists here. The Mortgage was in default. DBNTC was the mortgagee. It had advanced over $4,000 to cover taxes and insurance – debt only created and evidenced by the Mortgage. DBNTC did not seek to collect a personal judgment on the Note. The Ninth District erred, and DBNTC's proposition of law should be adopted.

E. <u>The presumptions created by the Restatement of Property § 5.4 demonstrate that standing exists through evidence of standing to enforce the note or mortgage.</u>

While the facts of this case present the question of whether a mortgagee has standing to enforce a mortgage, there is ample support for the more general proposition that standing to enforce the note or mortgage provides standing to enforce the other. As discussed in pages 17-21 of DBNTC's Brief, the Restatement of Property 3d § 5.4 provides that the party entitled to enforce **either** the note or mortgage also has the right to enforce the other. Expressly applicable to this case, the Restatement states: "[e]xcept as otherwise required by the Uniform Commercial Code, a transfer of a mortgage also transfers the obligation the mortgage secures unless the parties to the transfer agree otherwise." Restatement § 5.4(b). This is the "note follows mortgage" rule.

Ohio courts have regularly followed this rule in the standing context. *Bank of New York v. Dobbs*, 5th Dist. Knox No. 2009-CA-000002, 2009-Ohio-4742, ¶ 28; *Bank of N.Y. Mellon v. Grund*, 11th Dist. Lake No. 2014-L-025, 2015-Ohio-466, ¶ 53; *Chase Home Fin., LLC v. Dunlap*, 4th Dist. Ross No. 13CA3409, 2014-Ohio-3484, ¶¶ 13-20; *Fed. Home Loan Mtge. Corp. v. Trissell*, 2d Dist. Montgomery No. 25935, 2014-Ohio-1537, ¶¶ 14-15.

The Holdens' silence on these issues is deafening. None of the cases cited by the Holdens address the effect of the Third Restatement in this scenario. Again, and separately, DBNTC's proposition of law should be accepted.

F. There is no potential harm from adopting the proposition of law.

The Holdens' contrary proposition of law is a hyper-technical attempt to impose unnecessary requirements on a plaintiff seeking foreclosure. There are no potential dangers to a defendant by adopting this well-supported proposition of law in Ohio. In an action to foreclose the mortgage, the preliminary judicial report requires naming all parties in the chain of title. R.C. 2329.191. Therefore, no third parties can later claim they possessed an interest in the mortgage, as all parties reflected in the title search must be made a party to the action.

Moreover, as the indebtedness under the Note was extinguished in bankruptcy, no party can sue the Holdens to enforce the Note, separately from the security created by the Mortgage. The only legal claim at issue here was to enforce the Mortgage.

Lastly, were there any question on the issue, the U.C.C. provides that any proper payment under a note under judicial order is subject to disbursement under the amount of the house sale. Under R.C. 1303.67 (U.C.C. § 3-602), payments made to a person entitled to enforce the note discharge liability, even if the payments are made to a thief. As long as the payments are made to

a holder, a nonholder in possession, or a person designated in R.C. 1303.38, there is no—zero—risk of double payment.

The Holdens have completely failed to introduce any evidence that any other party is entitled to enforce the Note, or that any other party has even **attempted** to enforce the Note since their last payment in 2009. Their proposition of law is merely a stall tactic. Not at the filing of the complaint, but prior to judgment, the right to enforce a note and mortgage must be demonstrated. This is proper, and this occurred. The Ninth District's Opinion was in error.

IV. Conclusion

Ohio law and secondary authority support the proposition that a foreclosing defendant need only demonstrate an interest in the promissory note or mortgage at the time the complaint is filed. The Holdens' protestations to the contrary are not on point. The Ninth District should be reversed.

Respectfully submitted,

/s/Terry W. Posey, Jr.
Terry W. Posey, Jr. (#0078292) (COUNSEL OF RECORD)
Terry.Posey@ThompsonHine.com
THOMPSON HINE LLP
10050 Innovation Drive, Suite 400
Miamisburg, Ohio 45342-4934
Phone: 937.443.6857/Facsimile: 937.443.6635

Richard A. Freshwater (#0080762)
Richard.Freshwater@ThompsonHine.com
Stephen D. Williger (#0014342)
Stephen.Williger@ThompsonHine.com
THOMPSON HINE LLP
3900 Key Center, 127 Public Square
Cleveland, Ohio 44114
Telephone: (216) 566-5500
Facsimile: (216) 566-5800
Attorneys for Plaintiff-Appellant

Certificate of Service

I hereby certify that on December 15, 2015, a true copy of the foregoing document was served by ordinary U.S. Mail, postage paid, upon the following:

Marc E. Dann
Grace Doberdruk
DANN, DOBERDRUK & HARSHMAN
4600 Prospect Avenue
Cleveland, Ohio 44103

/s/Terry W. Posey, Jr.
Counsel

862865.3