[Cite as *Cart v. Fed. Natl. Mtge. Assn.*, 2012-Ohio-2241.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

ASHTABULA COUNTY, OHIO

CHRISTINE L. CART,	:	**O P I N I O N**
Plaintiff-Appellant,	:	
		CASE NO. 2011-A-0059
- vs -	:	
FEDERAL NATIONAL MORTGAGE ASSOCIATION, a.k.a. FANNIE MAE, et al.	:	
Defendant-Appellee.	:	

Civil Appeal from the Ashtabula County Court of Common Pleas, Case No. 2011 CV 330.

Judgment: Affirmed.

Christine L. Cart, pro se, 1380 W.S. Route 322, Orwell, OH 44076 (Plaintiff-Appellant).

Adam R. Fogelman, Lerner, Sampson & Rothfuss, L.P.A., 120 East Fourth Street, 8th Floor, P.O. Box 5480, Cincinnati, OH 45201 (For Defendant-Appellee).

DIANE V. GRENDELL, J.

{¶1} Plaintiff-appellant, Christine L. Cart, appeals the Judgment of the Ashtabula County Court of Common Pleas, dismissing her Action to Quiet Title, including claims for improvements, sweat equity, residual equity to Note, and for the recovery of real property/civil trespass. At issue before this court is whether the trial court properly denied Cart's Motion for Default Judgment, while granting defendant-appellee, Federal National Mortgage Association (Fannie Mae's), Motion for Judgment on the Pleadings. For the following reasons, we affirm the decision of the court below.

{¶2} On April 6, 2011, Cart filed a Complaint against Fannie Mae; Section 8, Lot 2, Orwell Township, R4, T8, Connecticut Western Reserve Ashtabula County, Ohio; and John Does 1-100. Cart alleged her "superior ownership" of real property, located at 7234 State Route 45, Orwell, Ohio, against the interests of Fannie Mae. Cart alleged that she has been in possession of the property since 1998 and acquired sole title to the property by way of a quitclaim deed in July 2006.

{¶3} Cart alleged that Fannie Mae claimed an adverse interest in the property "by virtue of a void *ab initio* foreclosure judgment, which is a matter of public record." Complaint at ¶ 8. According to the Complaint, the judgment "was procured by fraud," in that the party which brought the foreclosure action, Aurora Loan Services, LLC, "never owned the Mortgage and Note that they had claimed in their * * * foreclosure action against Christine." Complaint at ¶ 16, 22. Rather, "Fannie Mae owned the Mortgage ***before*** [Aurora Loan Services] initiated its foreclosure action on May 9, 2008." Complaint at ¶ 23.

{¶4} When Aurora Loan Services initiated the foreclosure action, the Note and Mortgage were owned by another entity. Complaint at ¶ 18. Accordingly, Aurora Loan Services lacked standing and an interest in the property to initiate foreclosure proceedings. Complaint at ¶ 31-32. Aurora Loan Services "fraudulently invoked the court's jurisdiction * * * by fraudulently filing the foreclosure action in which [Aurora Loan Services] falsely claimed to be the owner of the Note and Mortgage on the Property and falsely claimed to own the right to foreclose." Moreover, "Fannie Mae knew or should have known that their purchase of the deed was fraudulent since Fannie Mae was the alleged owner of the Note and Mortgage since 2006." Complaint at ¶ 36.

{¶5} Cart sought a declaration that she was the "true and lawful owner of the Property," and "that title in and to the real estate be quieted against any claim or interest of the defendants." Cart also raised "a claim for improvements pursuant to Ohio Revised Code § 5308.03, claim for sweat equity, claim for residual equity to Note and for civil trespass."

{¶6} On May 12, 2011, Cart filed a Motion for Default Judgment, based on Fannie Mae's failure to plead.

{¶7} On May 18, 2011, the trial court issued a Notice to Unrepresented Party. This Notice indicated that Cart was "not represented by a lawyer," recommended that she obtain a lawyer, and advised her that pro se litigants "are held to the same standards as litigants who are represented by counsel." At the end of the Notice, the Clerk was instructed to "serve notice of this docket entry" upon Cart and Fannie Mae.

{¶8} The May 18, 2011 Notice was recorded on the trial court's Docket and Journal as follows:

> NOTICE TO UNREPRESENTED PARTY FILED.
> COPIES TO:
> FEDERAL NATIONAL MORTGAGE ASSOCIATION
> (Defendant); ; PRO SE (Attorney) on behalf
> of CHRISTINE L. CART (Plaintiff)

{¶9} On May 24, 2011, Cart filed a Notice/Motion to the Court to Correct the Record/Docket Entry of May 18, 2011. Cart asserted that the docket entry of May 18, 2011, incorrectly stated that the Notice to Unrepresented Party was filed on her behalf when, in fact, she "***did not request*** the Court or the Clerk to act on her behalf to send the notice to [Fannie Mae]."

{¶10} On the same date, Cart filed an Objection to the Court's Filed Notice to Unrepresented Party and that the Court Take Judicial Notice of Facts and Law. Cart

asserted that, in light of the pending Motion for Default, the issuance of Notice to Unrepresented Party constituted "an indirect attempt by the Court to notice [Fannie Mae] and provide [Fannie Mae] another chance to enter the action."

{¶11} On May 26, 2011, Fannie Mae filed a Brief in Opposition to Plaintiff's Motion for Default Judgment and Motion for Leave to File a Response to Plaintiff's Complaint. Fannie Mae explained its failure to plead as a "good-faith error" and "inadvertent oversight": "from the time of receipt of the Complaint herein, it used all due diligence to retain outside counsel and to provide appropriate file information to said counsel; however, notwithstanding its diligence, it missed the answer date."

{¶12} On May 31, 2011, the trial court granted Fannie Mae's Motion for Leave to File.

{¶13} On June 14, 2011, Fannie Mae filed its Answer to the Complaint of [Plaintiff] Christine Cart.

{¶14} Also on June 14, 2011, Cart filed a combined Objection to the Court's Judgment Entry Granting Defendant's Brief in Opposition to Plaintiff's Motion for Default Judgment and Motion for Leave to File a Response to Plaintiff's Claim; Motion for Reconsideration; and Motion to Impose Sanctions for Fraud upon the Court.

{¶15} In the Objection and Motion for Reconsideration, Cart asserted that the trial court ruled on Fannie Mae's Motion for Leave to File a Response without affording her fourteen days to respond, as provided for in Ashtabula Court of Common Pleas Local Rule 6(C)(2) ("[e]ach party opposing the motion shall file a written response within fourteen (14) days after receipt of the motion").

{¶16} Cart further asserted that Fannie Mae failed to demonstrate "excusable neglect" for its failure to timely answer. Cart challenged Fannie Mae's claim to have

used “due diligence to retain outside counsel” by demonstrating that it had already retained counsel (Lerner, Sampson & Rothfuss) in a related matter as early as February 24, 2011, and used the same to seek a Writ of Possession for the subject property on April 15, 2011 (four days after being served with her Complaint in the present matter).

{¶17} In the Motion for Sanctions, Cart asserted that counsel for Fannie Mae “intentionally misrepresented” to the trial court that Fannie Mae was unable to retain outside counsel and “intentionally misled” the trial court with respect to the case law about “excusable neglect.”

{¶18} On June 29, 2011, Fannie Mae filed a Motion for Judgment on the Pleadings, pursuant to Civ.R. 12(C). Fannie Mae argued that Cart’s claims were procedurally barred by the doctrine of res judicata, the jurisdictional priority rule, and because they were compulsory counterclaims in the foreclosure action. Fannie Mae further argued that Cart’s Complaint failed to state a claim upon which relief could be granted.

{¶19} On August 1, 2011, Cart filed a Motion to Strike Defendant Fannie Mae’s Motion for Judgment on the Pleadings, on the grounds that Fannie Mae was not properly before the trial court and its Motion for Judgment on the Pleadings was premature.

{¶20} On August 25, 2011, the trial court entered a Judgment Entry, ruling on the pending motions.

{¶21} The trial court overruled Cart’s Motion for Default Judgment as moot, in light of the fact that Fannie Mae was granted leave to plead.

{¶22} The trial court overruled Cart’s Notice/Motion to the Court to Correct the Record/Docket Entry and Objection to the Court’s Filed Notice to Unrepresented Party,

noting that the court "routinely copies hearing notices, judgment entries, and other docket items to all parties in the case."

{¶23} The trial court overruled Cart's Objection to Granting Leave, Motion for Reconsideration, and Motion to Impose Sanctions, noting that "the law prefers to resolve cases on their merits, when reasonably possible, and that the Court had already determined, in the exercise of its discretion, to allow the defendant leave to answer."

{¶24} The trial court granted Fannie Mae's Motion for Judgment on the Pleadings and overruled Cart's Motion to Strike. In its Judgment, the court noticed the following proceedings in the foreclosure action, *Aurora Loan Services, LLC v. Christine Cart*, Ashtabula County Court of Common Pleas No. 2008 CV 664:

> **{¶25}** The docket in that case reflects that a Decree of Foreclosure was entered on August 29, 2008; that the property was purchased at sheriff's sale by the plaintiff, Aurora Loan Service, LLC, in that case on November 17, 2008; the bid was assigned to Federal National Mortgage Association, the defendant in this case, on November 20, 2008; and that the confirmation of sale was filed January 9, 2009. The final judgment in the foreclosure case has been appealed and affirmed by the Eleventh District Court of Appeals.

{¶26} The trial court concluded that Cart "no longer has a claim of title in the real property." The validity of the foreclosure decree has been affirmed on appeal and "cannot be collaterally attacked through a separate lawsuit alleging that the judgment was void *ab initio*." Cart's "claims that [she] is entitled to some recognition of equity in the property were compulsory counterclaims to the complaint in foreclosure." Cart's claims of trespass are based on incidents that occurred "after [her] ownership rights and

equity interests had been decided in the foreclosure case." Accordingly, Cart could "prove no set of facts warranting recovery."

{¶27} On September 16, 2011, Cart filed her Notice of Appeal. On appeal, Cart raises the following assignments of error:

{¶28} "[1.] The trial court erred, abused its discretion and committed prejudicial error by not granting Appellant's Motion for Default Judgment in accordance with Civ.R. 55(A) when defaulted defendant FANNIE MAE failed to appear, plead or defend itself in the action."

{¶29} "[2.] The trial Court erred, abused its discretion and committed prejudicial error by (A) serving a Notice to Unrepresented Party to defendant FANNIE MAE, who was in default and not a party to the action and (B) by the trial court stating that the Notice was served on behalf of Appellant, which is not true, and when the other defendants were not noticed by the court to be served."

{¶30} "[3.] The trial Court erred as a matter of law, abused its exercise of discretion and committed prejudicial error by granting FANNIE MAE leave to enter the action where FANNIE MAE failed to prove excusable neglect, in addition the court granted the leave only five days after FANNIE MAE's filing, failing to provide appellant the required 14 days to file a responsive reply, further FANNIE MAE filed its leave in bad faith and committed fraud upon the court."

{¶31} "[4.] The trial court erred as a matter of law, abused its discretion and committed prejudicial error in overruling Appellant's motion to impose sanctions for fraud upon the court where Appellant placed clear and convincing evidence on record of the alleged act."

{¶32} "[5.] The trial Court abused its exercise of discretion and committed prejudicial error by granting FANNIE MAE's premature Motion for Judgment on the Pleadings when the pleadings were not closed. The trial court should have granted Appellant's Motion to Strike FANNIE MAE's Judgment on the Pleadings."

{¶33} "[6.] The trial Court erred as a matter of law, abused its discretion and committed prejudicial error in its judgment entry in determining a void *ab initio* judgment cannot be collaterally attacked through a separate action."

{¶34} "[7.] The trial Court erred as a matter of law in dismissing appellant's complaint based on FANNIE MAE's Civ.R. 12(C) Motion for Judgment on the Pleadings and considering all evidentiary materials attached thereto."

{¶35} Cart's assignments of error will be considered in an ad hoc manner.

{¶36} In her second assignment of error, Cart contends that the trial court lacked "authority or jurisdiction to reach out to [Fannie Mae], as an advocate, when [Fannie Mae] did not consent to the trial court's jurisdiction," i.e. failed to appear.

{¶37} "Notice to the parties of a lawsuit is an elementary essential of a judicial proceeding, * * * and is required by due process." (Citations and footnote deleted.) *Ries Flooring Co., Inc. v. Dileno Constr. Co.*, 53 Ohio App.2d 255, 259, 373 N.E.2d 1266 (8th Dist.1977). Due process does not require, however, that the parties to a lawsuit be served with written notice of every action taken by the court. *E.g., Ohio Valley Radiology Assoc., Inc. v. Ohio Valley Hosp. Assn.*, 28 Ohio St.3d 118, 124, 502 N.E.2d 599 (1986) ("an entry of the date of trial on the court's docket constitutes reasonable, constructive notice of that fact").

{¶38} Cart's contention in the present case is that the trial court's service of Fannie Mae with notice of the docket entry put it on notice of the pending default and

prompted it to respond. There is no support, legal or factual, for this contention. As an initial matter, Cart cites to no authority, and this court is aware of none, that prohibits a court from serving a party in default notice of docket entries. Civil Rule 5(A), which provides that "[s]ervice is not required on parties in default for failure to appear," has been expressly held not to apply to courts. *Id.*

{¶39} Second, there is no evidence that the trial court was acting as an advocate when it served Fannie Mae with notice. The court's claim that it "routinely copies hearing notices, judgment entries, and other docket items to all parties in the case" is substantiated by its docket. For example, on May 23, 2011, five days after serving Fannie Mae with the Notice to Unrepresented Party, the court served Fannie Mae with notice of a Hearing on Emergency Motion for Temporary Restraining Order. Cart's Motion for Default was served by regular mail on Fannie Mae on May 12, 2011, six days before service of the Notice to Unrepresented Party. Thus, it cannot be reasonably argued that, but for the service of the Notice to Unrepresented Party, Fannie Mae would have failed to plead to Cart's Complaint.

{¶40} Cart also objects to the notation in the court's docket/journal that such notice was sent "on behalf of" Cart, when, in fact, such notice was sent without her knowledge or consent. Cart misinterprets the import of the notation, which signifies that the Notice to Unrepresented Party was issued to her as an unrepresented party, not that Fannie Mae was served with notice on her behest.

{¶41} The second assignment of error is without merit.

{¶42} In the first assignment of error, Cart asserts that the trial court erred by granting Fannie Mae leave to plead.

{¶43} A defendant in a lawsuit "shall serve his answer within twenty-eight days after service of the summons and complaint upon him." Civ.R. 12(A)(1). "When by these rules * * * an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion * * * upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect." Civ.R. 6(B)(2). "A trial court's Civ.R. 6(B)(2) determination is addressed to the sound discretion of the trial court and will not be disturbed on appeal absent a showing of an abuse of discretion." *State ex rel. Lindenschmidt v. Bd. of Commrs. of Butler Cty.*, 72 Ohio St.3d 464, 465, 650 N.E.2d 1343 (1995).

{¶44} "The determination of whether neglect is excusable or inexcusable must take into consideration all the surrounding facts and circumstances, and courts must be mindful of the admonition that cases should be decided on their merits, where possible, rather than procedural grounds." *Id.* at 466. "Although excusable neglect cannot be defined in the abstract, the test for excusable neglect under Civ.R. 6(B)(2) is less stringent than that applied under Civ.R. 60(B)." *Id.*

{¶45} In the present case, Fannie Mae claimed that, through "inadvertent oversight," it failed to timely answer despite the exercise of good faith and due diligence in retaining outside counsel and providing counsel with the appropriate information. Additional relevant circumstances include the fact that Fannie Mae was actively engaged in other litigation involving Cart and the property located at 7234 State Route 45, Orwell; Fannie Mae was served with the Complaint at its national headquarters in Washington, D.C.; default judgment had not been entered; and there was no demonstrable prejudice to Cart as a result of the delay. These circumstances have

been held sufficient to justify granting a party leave to plead under Civ.R. 6(B)(2). *Harvest Credit Mgt. VII, L.L.C. v. Harris*, 8th Dist. No. 96742, 2012-Ohio-80, ¶ 16 ("[a] trial court does not necessarily abuse its discretion when it permits a tardy filing even if a party has not provided an explicit reason for delay unless the other party is prejudiced by the delay") (citation omitted); *McGrath v. Bassett*, 196 Ohio App.3d 561, 2011-Ohio-5666, ¶ 14 (8th Dist.) ("[w]here a party pleads before a default is entered, though out of time and without leave, if the answer is good in form and substance, a default should not be entered as long as the answer stands as part of the record") (citation omitted); *Yoakam v. Boyd*, 6th Dist. No. OT-08-012, 2009-Ohio-395, ¶ 11 (the trial court abused its discretion by entering default against an out-of-state defendant who sought leave to plead prior to default being entered, and alleged that she was only recently able to retain local counsel, she was not seeking leave for the purpose of delay, and granting leave would not prejudice any party).

{¶46} The first assignment of error is without merit.

{¶47} In the third assignment of error, Cart raises additional arguments as to why the trial court abused its discretion in granting Fannie Mae leave to plead.

{¶48} Cart asserts that the trial court's granting Fannie Mae's Motion for Leave on May 31, 2011, only five days after it was filed, violated Ashtabula County Court of Common Pleas Local Rule 6(C)(2), which provides, "[e]ach party opposing [a] motion shall file a written response within fourteen (14) days after receipt of the motion."

{¶49} This court has held that the enforcement of local rules "is a matter within the discretion of the court promulgating the rules." *Jackson v. Jackson*, 11th Dist. Nos. 2011-L-016 and 2011-L-017, 2012-Ohio-662, ¶ 30, quoting *Dvorak v. Petronzio*, 11th Dist. No. 2007-G-2752, 2007-Ohio-4957, ¶ 30 (cases cited). Thus, a violation of the

local rules "is by itself typically insufficient to constitute grounds for reversal." *Yoel v. Yoel*, 11th Dist. No. 2009-L-063, 2012-Ohio-643, ¶ 40, citing *Allen v. Allen*, 11th Dist. No. 2009-T-0070, 2010-Ohio-475, ¶ 29-33.

{¶50} In the present case, Cart has failed to demonstrate that the trial court's ruling on the Motion for Leave five days after it was filed violated her rights to due process and/or equal protection. As discussed under the first assignment of error, the court did not abuse its discretion by granting leave based on the motion's merits. Moreover, the court's docket indicates that Cart filed an Objection to Granting Leave and Motion for Reconsideration on June 14, 2011, the issue was discussed by the court with the parties at a hearing on July 1, 2011, Fannie Mae filed a written response to Cart on August 1, 2011, and the court ultimately ruled on Cart's Objection to Granting Leave and Motion for Reconsideration on August 25, 2011. Cart was not deprived of the opportunity to be heard on this issue.

{¶51} Cart also asserts under this assignment of error that Fannie Mae failed to authenticate its grounds for excusable neglect by way of an affidavit based on personal knowledge. On this issue, the Ohio Supreme Court has held that, while an affidavit supporting allegations of excusable neglect is "preferable," it is not absolutely necessary in order for a court to find excusable neglect under Civ.R. 6(B). *Evans v. Chapman*, 28 Ohio St.3d 132, 135, 502 N.Ed.2d 1012 (1986).

{¶52} The third assignment of error is without merit.

{¶53} Under the fourth assignment of error, Cart claims the trial court erred in overruling her Motion to Impose Sanctions for Fraud upon the Court, where clear and convincing evidence of fraud was before the court. Cart's claim of fraud is based on Fannie Mae's/counsel's allegedly false representation that Fannie Mae was unable to

retain outside counsel. According to Cart, this claim is "devoid of truth" given the fact that Fannie Mae had already retained the services of Lerner, Sampson & Rothfuss in other matters relating to the subject property.

{¶54} Although Cart did not cite the legal basis of her claim for sanctions, such claims are generally reviewed under an abuse of discretion standard. *State ex rel. Striker v. Cline*, 130 Ohio St.3d 214, 2011-Ohio-5350, 957 N.E.2d 19, ¶ 11 (R.C. 2323.51); *State ex rel. Bardwell v. Cuyahoga Cty. Bd. of Commrs.*, 127 Ohio St.3d 202, 2010-Ohio-5073, 937 N.E.2d 1274, ¶ 9 (Civ.R. 11).

{¶55} In the present case, we find no abuse of discretion. Fannie Mae did not actually claim an inability to retain outside counsel, but rather "inadvertent oversight" in retaining and providing counsel with the relevant information. Such a claim is not inherently fantastic or improbable. Moreover, since Fannie Mae was already actively engaged in litigation involving Cart, there is no reason why it would seek to avoid responding to her Complaint in the present matter.

{¶56} The fourth assignment of error is without merit.

{¶57} In the fifth assignment of error, Cart contends the trial court erred in overruling her Motion to Strike, given that Fannie Mae's Motion for Judgment on the Pleadings was premature.

{¶58} "After the pleadings are closed but within such times as not to delay the trial, any party may move for judgment on the pleadings." Civ.R. 12(C). "If all pleadings are not closed, a Civ.R. 12(C) motion is premature and cannot be considered by the trial court." *State ex rel. Kaylor v. Bruening*, 80 Ohio St.3d 142, 143, 684 N.E.2d 1228 (1997).

{¶59} Cart maintains the pleadings in the present case were not closed when the trial court granted Fannie Mae's Motion on August 25, 2011, in that the defendant, Section 8, Lot 2, Orwell Township, had only been served with the Complaint as of August 3, 2011, and still had time to answer.

{¶60} We disagree. Inasmuch as Section 8, Lot 2, Orwell Township does not constitute a juridical person for the purposes of pleading, the granting of Fannie Mae's Motion for Judgment was not premature. *See* R.C. 5303.01 ("[a]n action [to quiet title] may be brought by a person in possession of real property, by himself or tenant, against any person who claims an interest therein adverse to him, for the purpose of determining such adverse interest"); *Baker v. McKnight*, 4 Ohio St.3d 125, 127, 447 N.E.2d 104 (1983) ("an action may only be brought against a party who actually or legally exists and has the capacity to be sued") (citation omitted).

{¶61} The fifth assignment of error is without merit.

{¶62} In her sixth and seventh assignments of error, Cart challenges the trial court's dismissal of the Complaint on the pleadings. Cart argues that the court erred by holding the judgment of foreclosure "cannot be collaterally attacked through a separate lawsuit alleging that the judgment was void *ab initio*." Cart further argues that, under the notice pleading standard of Civ.R. 8, the allegations of her Complaint set forth a valid claim that the judgment of foreclosure was void, and that it was improper for the court to consider other evidentiary materials.

{¶63} A Civ.R. 12(C) motion for judgment on the pleadings only presents a question of law. Determination of the motion is restricted to the allegations in the pleadings, which, along with all reasonable inferences to be drawn therefrom, must be construed in favor of the non-moving party. *Peterson v. Teodosio*, 34 Ohio St.2d 161,

165-166, 297 N.E.2d 113 (1973). "To uphold a dismissal on the pleadings pursuant to Civ.R. 12(C), the court [of appeals] must find, beyond a doubt, that the plaintiff could prove no set of facts in support of his claim which would entitle him to relief." *Lin v. Gatehouse Constr. Co.*, 84 Ohio App.3d 96, 99, 616 N.E.2d 519 (8th Dist.1992).

{¶64} Cart's Complaint seeks to undermine the validity of the judgment of foreclosure entered against her in Ashtabula County Court of Common Pleas Case No. 2008 CV 664. This case has been the subject of prior appeals: *Aurora Loan Servs., LLC v. Cart*, 11th Dist. No. 2009-A-0026, 2010-Ohio-1157; *Aurora Loan Servs., LLC v. Cart*, 11th Dist. No. 2010-A-0023, 2010-Ohio-4085; *Aurora Loan Servs., LLC v. Cart*, 11th Dist. No. 2010-A-0024, 2011-Ohio-2450.

{¶65} With regard to collateral attacks, the Ohio Supreme Court has affirmed the "longstanding principle" of Ohio jurisprudence "that final judgments are meant to be just that--final." *Ohio Pyro, Inc. v. Ohio Dept. of Commerce*, 115 Ohio St.3d 375, 2007-Ohio-5024, 875 N.E.2d 550, ¶ 22. Such judgments, in the ordinary course of events, are subject to direct attack through appeal by the parties to the litigation. *Id.* "For these reasons, it necessarily follows that collateral or indirect attacks are disfavored and that they will succeed only in certain very limited situations." *Id.* The Ohio Supreme Court has identified two such "very limited situations" as "when the issuing court lacked jurisdiction or when the order was the product of fraud (or of conduct in the nature of fraud)." *Id.* at ¶ 23.

{¶66} A collateral attack on a final judgment challenges the "fundamental validity of the previous judgment" and involves "the same considerations that come into play when considering whether a particular judgment is void or voidable." *Id.* at ¶ 25. "When a judgment was issued without jurisdiction or was procured by fraud, it is void and is

subject to collateral attack. * * * But in the absence of those fundamental deficiencies, a judgment is considered 'valid' (even if it might perhaps have been flawed in its resolution of the merits of the case) and is generally not subject to collateral attack." *Id.*

{¶67} Construing the allegations of Cart's Complaint most strongly in her favor, the prior foreclosure action was brought by Aurora Loan Services, which did not own the mortgage on Cart's property, but was merely the servicer for Fannie Mae, the true owner of the mortgage. Cart maintains, based on these facts, that Aurora Loan Services "lacked standing" to initiate the foreclosure action, and invoked the trial court's jurisdiction by "falsely claim[ing] to own the right to foreclose." Accordingly, the subsequent foreclosure judgment "was procured through fraud." We disagree.

{¶68} Aurora Loan Services' alleged misrepresentations as to ownership of the mortgage do not rise to the level of fraud so as to affect the fundamental validity of the previous judgment. Cart challenges Aurora Loan Services' right to initiate the action, she does not contest the merits of the foreclosure itself. As this court has explained in a prior appeal, the lack of standing to initiate a foreclosure action is not a jurisdictional deficiency and does not void a subsequent judgment of foreclosure. *Cart*, 2010-Ohio-1157, at ¶ 18 (cases cited therein). Additionally, this court held that the argument regarding a party's lack of standing is waived if not timely raised. *Id.* Cart cannot avoid this court's prior rulings on this issue by representing her arguments in the present action as based on fraud.

{¶69} Significantly, Cart maintains the mortgage was owned by Fannie Mae at the time Aurora Loan Services initiated the foreclosure action, the party against which she now seeks to assert superior title. Cart does not allege that the mortgage was not in default, and Aurora Loan Services' status as a real party in interest has no bearing on

this issue. Thus, even if Aurora Loan Services' alleged misrepresentations in the foreclosure were construed as conduct in the nature of fraud, the final judgment of foreclosure remains sound. According to the allegations of Cart's Complaint, Fannie Mae was the proper party to initiate the foreclosure. Inasmuch as Cart's Complaint alleges that Fannie Mae held the original mortgage and purchased the property after foreclosure, it fundamentally fails to assert a cause of action for superior title.

{¶70} In sum, the allegations of Cart's Complaint do not establish that the judgment of foreclosure was the product of fraud, or was otherwise void ab initio. Accordingly, that judgment is not subject to collateral attack.

{¶71} The sixth and seventh assignments of error are without merit.

{¶72} For the foregoing reasons, the Judgment of the Ashtabula County Court of Common Pleas, dismissing Cart's Action to Quiet Title, is affirmed. Costs to be taxed against appellant.

TIMOTHY P. CANNON, P.J.,

CYNTHIA WESTCOTT RICE, J.,

concur.