[Cite as *U.S. Bank Natl. Assn. v. Lapierre*, 2010-Ohio-4125.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

U.S. Bank National Association as Trustee for Citigroup Mortgage Loan Trust, Inc., etc.,	:	
Plaintiff-Appellee,	:	
v.	:	No. 09AP-990 (C.P.C. No. 09CVE-08-12754)
Joseph G. Lapierre et al.,	:	(REGULAR CALENDAR)
Defendants-Appellants.	:	

D E C I S I O N

Rendered on September 2, 2010

Manley, Deas, Kochalski, LLC, and *Kyle E. Timken*, for appellee.

Joseph G. Lapierre and Lori L. Lapierre, pro se.

APPEAL from the Franklin County Court of Common Pleas.

McGRATH, J.

{¶1} Defendants-appellants, Joseph G. Lapierre and Lori L. Lapierre ("appellants"), appeal from the judgment of the Franklin County Court of Common Pleas, which granted summary judgment in favor of plaintiff-appellee, U.S. National Bank Association as Trustee for Citigroup Mortgage Loan Trust, Inc. ("appellee"). For the reasons that follow, we affirm.

{¶2} The following facts are pertinent to this appeal. On August 21, 2009, appellee filed the present action in foreclosure against appellants, the owners of residential real property located in Columbus, Ohio. Appellants had conveyed to appellee a mortgage interest in the real property, and appellee alleged that appellants had defaulted on the note associated therewith, the face amount of which was $32,305.42. Appellee further alleged that the note contained a term specifying that it would bear interest at the rate of 7.0 percent per annum. Appellee alleged that appellants' total obligation due and owing under the terms of the note was $32,305.42, with interest accruing from April 1, 2009.

{¶3} On September 29, 2009, appellee filed a motion for summary judgment. Appellee supported its motion with the affidavit of Teresa S. Clopp ("Clopp"), who identified herself therein as an employee of appellee and was charged with the supervision and servicing of the loan subject of this action. Clopp averred that she is the custodian of the business records pertaining thereto and that the copies of the note and mortgage attached to the complaint were true and exact copies of the originals, kept in the ordinary course of business.

{¶4} Clopp further stated that appellants had failed to make payments as required by the terms of the note and mortgage, that appellee therefore had accelerated the balance due and owing, and that said balance is $32,305.42, with interest at the rate of 7.0 percent per annum from April 1, 2009. Finally, Clopp attached to her affidavit what she averred were true copies of appellee's records evidencing the debits, credits and balance due on the loan.

{¶5} Appellants did not timely file a memorandum contra or otherwise respond to the motion for summary judgment. On October 14, 2009, the court journalized a judgment entry/decree in foreclosure in which the court granted summary judgment to appellee on its claims. Two days later, on October 16, 2009, appellants filed a motion, pursuant to Civ.R. 56(F), requesting an additional 60 days to respond to appellee's motion for summary judgment. The trial court did not rule on appellants' motion.

{¶6} On October 22, 2009, appellants appealed to this court. Appellants' brief on appeal does not contain a statement of the assignments of error as required under App.R. 16(A)(3). Nonetheless, the errors assigned from the trial court's judgment is readily discernable from the following "Argument" section contained in appellants' brief.

> [1.] Plaintiff did not have the right to bring foreclosure proceedings against the Defendants.
>
> [2.] Defendants assert Mortgage Servicing Fraud by Plaintiffs, and therefore "Unclean Hands."
>
> [3.] Plaintiff is barred from award or recovery due to "Unclean Hands."
>
> [4.] Breach of contract – Plaintiff did not handle defendant's payments properly or provide Breach of Contract letter, denying Defendants Due Process.
>
> [5.] Plaintiff has the burden of proof to prove the Defendants actions caused a financial burden to Plaintiff. Plaintiffs failed to do so.
>
> [6.] Pro se provides leniency – summary judgment should be overturned.
>
> [7.] National City Mortgage Company is in violation of the Truth in Lending Laws on the original note, rendering it null and void.

> [8.] Plaintiff did not apply Reasonable Attorney Fees to this mortgage note.

{¶7} At this juncture, we note that appellee has filed a motion to strike the exhibits attached to appellants' brief because the same were not included in the record of the trial court as certified by the clerk of courts under App.R. 9. We agree and sustain appellee's motion to strike. As such, we shall not consider the exhibits attached to appellants' brief.

{¶8} Appellants' arguments collectively challenge the trial court's grant of summary judgment in favor of appellee. Civ.R. 56(A) provides the manner in which a party may seek judgment as a matter of law:

> A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part of the claim, counterclaim, cross-claim, or declaratory judgment action. A party may move for summary judgment at any time after the expiration of the time permitted under these rules for a responsive motion or pleading by the adverse party, or after service of a motion for summary judgment by the adverse party. If the action has been set for pretrial or trial, a motion for summary judgment may be made only with leave of court.

{¶9} Summary judgment is proper only when the party moving for summary judgment demonstrates: (1) no genuine issue of material fact exists; (2) the moving parties are entitled to judgment as a matter of law; and (3) reasonable minds could come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made, when the evidence is construed in a light most favorable to the nonmoving party. Civ.R. 56(C); *State ex rel. Grady v. State Emp. Relations Bd.*, 78 Ohio St.3d 181, 1997-Ohio-221.

{¶10} We review the trial court's grant of summary judgment de novo. *Coventry Twp. v. Ecker* (1995), 101 Ohio App.3d 38. The moving party bears the initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record before the trial court which demonstrate the absence of a genuine issue of fact on the essential element(s) of the nonmoving party's claims. *Dresher v. Burt*, 75 Ohio St.3d 280, 292, 1996-Ohio-107. The court in *Dresher* also held:

> * * * The moving party cannot discharge its initial burden under Civ.R. 56 simply by making a conclusory assertion that the nonmoving party has no evidence to prove its case. Rather, the moving party must be able to specifically point to some evidence of the type listed in Civ.R. 56(C) which affirmatively demonstrates that the nonmoving party has no *evidence* to support the nonmoving party's claims. If the moving party fails to satisfy its initial burden, the motion for summary judgment must be denied. However, if the moving party has satisfied its initial burden, the nonmoving party then has a reciprocal burden outlined in Civ.R. 56(E) to set forth specific facts showing that there is a genuine issue for trial and, if the nonmovant does not so respond, summary judgment, if appropriate, shall be entered against the nonmoving party.

(Emphasis sic.) Id. at 293.

{¶11} This court has previously held that, with respect to procedural rules, pro se litigants are to be held to the same standards as members of the bar. In *Justice v. Lutheran Soc. Servs.* (Apr. 8, 1993), 10th Dist. No. 92AP-1153, we held:

> While one has the right to represent himself or herself and one may proceed into litigation as a *pro se* litigant, the *pro se* litigant is to be treated the same as one trained in the law as far as the requirement to follow procedural law and the adherence to court rules. If the courts treat *pro se* litigants differently, the court begins to depart from its duty of impartiality and prejudices the handling of the case as it relates to other litigants represented by counsel.

Id. See also *Jones v. Booker* (1996), 114 Ohio App.3d 67, 70.

{¶12} After a review of appellee's motion for summary judgment, we find that appellee met its initial burden by relying upon the affidavit of Teresa Clopp, which established that the note and mortgage subject of this action were maintained in the ordinary course of business, the mortgage was properly recorded, and appellants failed to make payments as required by the terms and conditions of the note. The affidavit further established that there is a balance due and owing on the note in the amount of $32,305.42, with interest at the rate of 7.0 percent per annum from April 1, 2009.

{¶13} By failing to respond to the motion for summary judgment, appellants failed to meet their reciprocal burden, pursuant to Civ.R. 56(E), to avoid judgment being rendered against them. Appellee demonstrated that no genuine issue of material fact remained and that summary judgment was appropriate. Accordingly, the trial court correctly granted summary judgment in favor of appellee.

{¶14} For the foregoing reasons, we overrule appellants' eight assignments of error, and affirm the judgment of the Franklin County Court of Common Pleas.

Motion to strike sustained;
judgment affirmed.

BRYANT and BROWN, JJ., concur.