OHIO COURT OF APPEALS, THIRD DISTRICT

First Union National Bank v. Hufford, 146 Ohio App. 3d 673

767 N.E.2d 1206 (Ohio Ct. App. 2001) · Decided September 25, 2001

SUMMARY

The Ohio appellate court reversed a foreclosure summary judgment because First Union National Bank failed to establish that it was the real party in interest entitled to enforce the promissory note and mortgage. The court also held that the plaintiff's status as the real party in interest was timely challenged and that the trial court had not adequately determined whether HomEq Servicing Corporation was a necessary party. The matter was remanded for further proceedings.

CASE DETAILS

COURT	Ohio Court of Appeals, Third District
WRITING FOR THE COURT	Walters; Shaw; Bryant
JURISDICTION	Ohio
DECIDED	September 25, 2001
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from the Auglaize County Court of Common Pleas's grant of summary judgment and decree of foreclosure in favor of First Union National Bank.
STANDARD OF REVIEW	Summary judgment is reviewed de novo and independently, applying the same standard as the trial court. Summary judgment is proper when no genuine issue of material fact remains, the moving party is entitled to judgment as a matter of law, and reasonable minds could reach only the conclusion favoring the moving party.
PRECEDENTIAL VALUE	published
PARTIES	Priscilla Hufford v. First Union National Bank

TOPICS

summary judgment · foreclosure · civil procedure · standard of review · appellate procedure

PRACTICE AREAS

civil procedure · appellate procedure · foreclosure · real estate · commercial litigation

QUESTIONS PRESENTED

1. Whether the trial court properly granted summary judgment when the plaintiff had not established that it was the real party in interest entitled to enforce the note and mortgage.
2. Whether Hufford timely raised the issue of the plaintiff's status as the real party in interest despite not pleading it as a conventional affirmative defense in the initial answer.
3. Whether HomEq Servicing Corporation might be a necessary or indispensable party whose joinder had to be resolved before summary judgment and foreclosure.

HOLDINGS

1. A defendant must timely raise a challenge to the plaintiff's status as the real party in interest, but noncompliance with Ohio Civ.R. 17(A) is not an affirmative defense that is waived merely because it was not asserted in the initial responsive pleading or motion.
2. The bank was not entitled to summary judgment because it failed to produce sufficient evidence establishing its right to enforce the note and mortgage, leaving the identity and priority of the mortgage holder as a genuine issue of material fact.
3. If HomEq Servicing Corporation was an indispensable party because of an interest in the note or mortgage, the trial court was required to order joinder rather than enter summary judgment and a decree of foreclosure.

KEY QUOTATIONS

> *"Therefore, though we agree that failure to name the real party in interest as a party plaintiff must be timely raised by the defendant, we hold that noncompliance with Crim.R. 17 is not an affirmative defense that is waived if not asserted in the defendant's initial responsive motion or pleading."* (678)

> *"First Union National Bank had not established itself as a real party in interest and was therefore not entitled to judgment as a matter of law."* (680)

FACTUAL BACKGROUND

Hufford borrowed $34,500 for home improvements and executed a promissory note and mortgage identifying First Union Home Equity Bank, N.A. as lender and payee. After Hufford stopped making payments, First Union National Bank filed a foreclosure action, asserting ownership of the note and mortgage. Hufford disputed the bank's successor-in-interest status, and notices and statements from HomEq Servicing Corporation suggested that HomEq might claim an interest in the mortgage. The bank's evidence established a merger involving First Union Home Equity but did not clearly connect the plaintiff to the note and mortgage or resolve HomEq's potential interest.

PROCEDURAL HISTORY

Hufford borrowed money secured by a mortgage and stopped making payments. First Union National Bank filed a foreclosure complaint and later moved for summary judgment. Hufford challenged the bank's status as owner and holder of the note and mortgage and sought to join HomEq Servicing Corporation. The trial court granted summary judgment and foreclosure, and Hufford appealed.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for further proceedings consistent with the opinion, including determination of the plaintiff's status as the real party in interest, the identity and priority of the mortgage holder, and whether HomEq Servicing Corporation must be joined.

CASES CITED

- Schuch v. Rogers, 113 Ohio App. 3d 718, 720 (1996)
- Midwest Specialties, Inc. v. Firestone Tire & Rubber Co., 42 Ohio App. 3d 6, 8 (1988)
- Horton v. Harwick Chemical Corp., 73 Ohio St. 3d 679, 686-687 (1995)
- Dresher v. Burt, 75 Ohio St. 3d 280, 293 (1996)
- Shealy v. Campbell, 20 Ohio St. 3d 23, 24-25 (1985)
- Young v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 88 Ohio App. 3d 12, 16 (1993)
- Nuco Plastics, Inc. v. Universal Plastics, Inc., 76 Ohio App. 3d 137, 143 (1991)
- Kramer v. Millott (Sept. 23, 1994), Erie App. No. E-94-5, unreported
- State ex rel. Tubbs Jones v. Suster, 84 Ohio St. 3d 70 (1998)
- State ex rel. Dallman v. Court of Common Pleas, Franklin County, 35 Ohio St. 2d 176 (1973)
- Travelers Indemnity Co. v. R. L. Smith Co. (Apr. 13, 2001), Lake App. No. 2000-L-014, unreported
- Hang Fu v. Hallee Homes, Inc. (Aug. 10, 2000), Cuyahoga App. No. 76589, unreported
- Robbins v. Warren (May 6, 1996), Butler App. No. CA95-11-200, unreported
- MacLellan v. Motorist Insurance Co. (Nov. 8, 1993), Cuyahoga App. No. 64090, unreported
- Mikolay v. Transcon Builders, Inc. (Jan. 22, 1981), Cuyahoga App. No. 42047, unreported, 1981 Ohio App. LEXIS 11690
- Franzese v. Falcon (Nov. 19, 1979), Lake App. No. 7-071, unreported, 1979 Ohio App. LEXIS 9451

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