OHIO COURT OF APPEALS, SEVENTH APPELLATE DISTRICT

U.S. Bank National Association, as Trustee for Banc of America Funding Corporation Mortgage Pass-Through Certificates, Series 2006-4 v. Thomas W. Petrarca et al.

2026-Ohio-293 · No. 25 MA 0065 · Decided January 30, 2026

SUMMARY

The Ohio Seventh District Court of Appeals reviewed a foreclosure judgment in favor of U.S. Bank National Association against Thomas and Angela Petrarca. The court held that U.S. Bank had standing based on its possession of the note and assignment of the mortgage, and that the borrowers' loss-mitigation arguments did not prevent foreclosure. However, the court reversed and remanded the summary judgment because a referenced affidavit supporting default and other foreclosure elements was not properly filed or part of the appellate record.

CASE DETAILS

COURT	Ohio Court of Appeals, Seventh Appellate District
WRITING FOR THE COURT	Cheryl L. Waite, P.J.; Mark A. Hanni, J.; Katelyn Dickey, J.
JURISDICTION	Ohio Court of Appeals, Seventh Appellate District, Mahoning County
DECIDED	January 30, 2026
DOCKET	25 MA 0065
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Defendants appealed a Mahoning County Court of Common Pleas judgment granting the bank summary judgment in a foreclosure action.
STANDARD OF REVIEW	Summary judgment is reviewed de novo under Civ.R. 56(C). Standing is also reviewed de novo.
PRECEDENTIAL VALUE	Published Ohio Court of Appeals opinion
PARTIES	Thomas W. Petrarca, Angela M. Petrarca v. U.S. Bank National Association, as Trustee for Banc of America Funding Corporation Mortgage Pass-Through Certificates, Series 2006-4

TOPICS

foreclosure · summary judgment · standing · uniform commercial code · appellate procedure

PRACTICE AREAS

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

QUESTIONS PRESENTED

1. Whether U.S. Bank had standing to initiate the foreclosure action based on its possession of the note indorsed in blank and its assignment of the mortgage.
2. Whether Angela Petrarca's alleged fourth loss-mitigation application required the servicer to review the application or prevented foreclosure under 12 C.F.R. 1024.41.
3. Whether U.S. Bank established the elements of its foreclosure claim and was entitled to summary judgment when the affidavit supporting key evidentiary assertions was not properly filed.

HOLDINGS

1. U.S. Bank had standing to foreclose because the record showed that it was the holder of the note indorsed in blank and the assignee of the mortgage before the complaint was filed. A minor discrepancy in the trustee's name did not establish that the note and mortgage belonged to a different entity.
2. The alleged fourth loss-mitigation application did not prevent foreclosure because the record did not establish that it was complete, and the servicer was not required to process a subsequent application after three prior complete applications had been denied while the borrowers remained delinquent.
3. U.S. Bank was not entitled to summary judgment because the affidavit on which it relied was not properly filed or part of the record, leaving insufficient evidentiary support for default, the relevance of business records, and other elements of the foreclosure claim.

KEY QUOTATIONS

> *"A party has standing to prosecute a foreclosure action if it establishes either that (1) it was the holder of the note in question, or (2) it was assigned the mortgage."* (¶ 10)

> *"As the holder of the bearer note, Appellee was entitled to enforce the note, pursuant to R.C. 1303.31(A)(1), and had standing to invoke the trial court's jurisdiction."* (¶ 22)

> *"To properly support a foreclosure action in summary judgment, a plaintiff must provide evidence establishing: "(1) the foreclosing party is the holder of the mortgage, or is a party entitled to endorse the mortgage; (2) the mortgagor is in default; (3) all conditions precedent have been met; and (4) the amount of principal and interest due.""* (¶ 35)

> *"The trial court was left with mere, unsubstantiated allegations on which to base its decision. They do not support summary judgment in this matter and it is apparent that without this proof, questions of material fact remain to be decided in this case."* (¶ 38)

FACTUAL BACKGROUND

Thomas Petrarca executed a $960,000 promissory note in 2006, secured by a mortgage on property jointly owned by Thomas and Angela Petrarca. The note was ultimately indorsed in blank, and the mortgage was assigned to U.S. Bank before the foreclosure complaint was filed. The borrowers defaulted and pursued multiple loss-mitigation applications, three of which were denied. U.S. Bank relied on an affidavit that it asserted had been filed with its summary-judgment motion, but the affidavit and its attachments were not part of the appellate record or properly filed in the trial court.

PROCEDURAL HISTORY

U.S. Bank filed a foreclosure complaint in the Mahoning County Court of Common Pleas. The trial court denied the defendants' motion for summary judgment, granted U.S. Bank's motion for summary judgment, determined that $650,014.37 was due, and ordered foreclosure and sale of the property. The defendants timely appealed, and the Court of Appeals affirmed in part, reversed in part, and remanded.

DISPOSITION

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reversed_and_remanded
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REMAND INSTRUCTIONS

The matter is remanded to the Mahoning County Court of Common Pleas for further proceedings according to law and consistent with the opinion. The trial court may not grant summary judgment on the existing record without properly filed evidentiary support for the foreclosure elements.

CASES CITED

- Fed. Home Loan Mtge. Corp. v. Schwartzwald, 2012-Ohio-5017, ¶ 41
- Deutsche Bank Natl. Tr. Co. v. Holden, 2016-Ohio-4603, ¶ 35
- Wells Fargo Bank, N.A. v. Cook, 2016-Ohio-1060, ¶ 8, ¶ 19 (7th Dist.)
- Yemma v. Leber Real Estate, Ltd., 2022-Ohio-3289 (7th Dist.)
- Bank of Am., N.A. v. Kuchta, 2014-Ohio-4275, ¶ 22
- Bank of Am., N.A. v. Beato, 2016-Ohio-8035, ¶ 7 (7th Dist.)
- Bridge Health Care Partners, LLC v. LTAH Real Estate Holdings, LLC, 2022-Ohio-1053, ¶ 36 (7th Dist.)
- State ex rel. Jones v. Suster, 84 Ohio St.3d 70, 77 (1998)
- U.S. Bank Natl. Assn. v. O'Malley, 2019-Ohio-5340, ¶¶ 25-27 (8th Dist.)
- Grafton v. Ohio Edison Co., 77 Ohio St.3d 102, 105 (1996)
- Temple v. Wean United, Inc., 50 Ohio St.2d 317, 327 (1977)
- Hoyt, Inc. v. Gordon & Assoc., Inc., 104 Ohio App.3d 598, 603 (8th Dist.)
- Dresher v. Burt, 75 Ohio St.3d 280, 293, 296 (1996)
- Brewer v. Cleveland Bd. of Edn., 122 Ohio App.3d 378, 386 (8th Dist.)
- Byrd v. Smith, 2006-Ohio-3455, ¶ 28
- Isaac v. Alabanza Corp., 2007-Ohio-1396, ¶ 41 (7th Dist.)
- Rutana v. Koulianos, 2020-Ohio-6848, ¶ 35 (7th Dist.)