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IN THE COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO

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DEUTSCHE BANK NATIONAL
TRUST COMPANY, as Trustee under
the Pooling and Servicing Agreement
dated as of November 1, 2005,
GSAMP Trust 2005-HES,

Case No.: 2008 CVE 807

Judge W. Kenneth Zak

Plaintiff,

v.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

STEVE M. FECK, et al.,

Defendants.

Thomas L. Henderson, Esq., Attorney for Plaintiff, 120 East Fourth Street, P.O. Box 5480,
Cincinnati, OH 45201

Daniel L. McGookney, Esq., Attorney for Defendants, 125 Meigs Street, Sandusky, OH
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Street, Suite 400, Cincinnati, OH 45202

Alan B. Weisberg, Esq., Attorney for The State of Ohio, 313 West Lakeside Avenue, Suite
200, Cleveland, OH 44113

This matter came before the Court for bench trial on June 10, 2010, with the case ordered
dismissed for lack of subject matter jurisdiction. Plaintiff Deutsche Bank National Trust
Company, as Trustee under the Pooling and Servicing Agreement dated as of November 1, 2005,
GSAMP Trust 2005-HES ("Plaintiff") thereafter timely submitted its request for findings of fact
and conclusions of law on June 11, 2010. Both Plaintiff and Defendants Steve M. and Michelle
R. Feck ("Defendants") submitted their proposed findings of fact and conclusions of law with the
Court on August 4, 2010. Having reviewed the parties' proposals, the Court's findings of fact
and conclusions of law follow below.

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FINDINGS OF FACT

1. The parties appeared before the Court for bench trial on June 10, 2010, each side being represented by counsel.
2. The Court granted Plaintiff's motion in limine to exclude the testimony of Defendants' proffered expert witness Marie McDonnell, finding her late disclosure untimely and unduly prejudicial to the Plaintiff.
3. The parties stipulated the following facts into evidence:
 - a. Defendant Steve M. Feck applied for a loan to finance the purchase of real property commonly known as 1303 Betty Jane Lane, Amelia, OH 45102 (the "Property").
 - b. Defendants, as husband and wife, received fee simple title to the Property by virtue of a Survivorship Deed dated May 25, 2005. This deed was originally recorded with the Clermont County Recorder on May 25, 2005 in Official Record Volume No. 1879, page 2070, and was re-recorded on October 3, 2005 in Official Record Volume No. 1919, page 1977.
 - c. Defendant Steve M. Feck voluntarily executed an adjustable rate promissory note (the "Note") dated May 23, 2005 in the principal amount of \$190,000.00. The Note was originally payable to SouthStar Funding, LLC ("SouthStar").
 - d. The mortgage securing payment of the Note (the "Mortgage") was recorded with the Clermont County Recorder on May 25, 2005 in Official Record Volume No. 1879, page 2072.
 - e. Defendant Steve M. Feck ceased making payments on the Note.
 - f. Defendant Steve M. Feck is not currently making payments on the Note.

- g. Defendants reside at the Property.
 - h. Defendants receive mail at the Property.
4. Plaintiff proceeded with its case by presenting the testimony of Christopher Spradling ("Spradling"), a representative of **Litton Loan Servicing ("Litton")**.
 5. Spradling testified that Litton acted as Servicer for the GSAMP Trust 2005-HE3, the securitized trust under which Plaintiff served as Trustee and into which the mortgage loan at issue was allegedly placed as of November 1, 2005.
 6. Spradling further testified that Litton, in its role as Servicer, was responsible for collecting monthly payments from Defendants and for keeping and maintaining records in connection with Defendants' account.
 7. Spradling testified that Litton, in its role as Servicer, was not responsible for keeping the original loan file presumably containing the original subject Note.
 8. Spradling had no direct personal knowledge as to whether or not Plaintiff received actual possession of the Note when the GSAMP Trust 2005-HE3 was formed or whether it had received possession of the Note at the time it filed its complaint in this matter.
 9. All business records offered by Plaintiff were admitted into evidence with the exception of Exhibit 4, which was excluded as hearsay. Exhibit 4 was a letter from **J.P. Morgan Trust Company, N.A.**, as Custodian, jointly addressed to Plaintiff and Litton Loan Servicing and GS Mortgage Securities Corporation. Spradling identified Exhibit 4 as the Initial Certification of Custodian pursuant to the subject Pooling and Servicing Agreement Dated as of November 1, 2005, GSAMP Trust 2005-HE3.
 10. **Plaintiff produced the original Note and Mortgage at trial.**

11. By way of an Allonge to the original Note, the Note was at some point transferred from SouthStar Funding by blank indorsement.
12. The Mortgage was assigned to Plaintiff by an instrument dated April 21, 2008 and recorded with the Clermont County Recorder on May 1, 2008, in Official Record Volume No. 2122, page 1206.
13. Defendants proffered no evidence at trial.

CONCLUSIONS OF LAW

1. When an instrument is indorsed in blank, it becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed. See R.C. 1303.25(B).
2. Civ.R. 17(A) requires that all actions be prosecuted in the name of the real party in interest. See Civ.R. 17(A).
3. Where a party lacks a real interest in the subject matter of the action, it lacks standing to invoke the Court's jurisdiction. See, e.g., *State ex rel. Dattman v. Court of Common Pleas* (1973), 35 Ohio St.3d 176, 298 N.E.2d 515, at syllabus.
4. The holder of rights or interest in property is a necessary party to a foreclosure action. *Wells Fargo Bank, N.A. v. Jordan*, Eighth District No. 91675, 2009-Ohio-1092, at ¶12 (citations omitted).
5. Where a plaintiff in a foreclosure action is not the real party in interest as of the filing of its complaint, dismissal of the complaint without prejudice as to its re-filing is the appropriate remedy. See *Wells Fargo Bank, N.A. v. Byrd*, 178 Ohio App.3d 285, 2008-Ohio-4603, 897 N.E.2d 722.
6. In light of the Note's transfer from SouthStar by undated blank indorsement and the testimony of a witness without direct personal knowledge as to the timing of the Note's

actual receipt by Plaintiff, the evidence offered by Plaintiff during trial was insufficient to prove that it actually held the Note on April 16, 2008, the day it filed its complaint.

- 7. In light of the April 21, 2008 execution date of the Mortgage assignment to Plaintiff, the Court concludes that Plaintiff lacked the ability to pursue execution of any judgment against the Property at the time it requested such relief on April 16, 2008.
- 8. By producing the original Note at trial, Plaintiff proved that it was the holder of the Note on June 10, 2010 with the corresponding right to enforce it as of that time.
- 9. By virtue of the assignment dated April 21, 2008 and recorded with the Clermont County Recorder on May 1, 2008, in Official Record Volume No. 2122, page 1206, the Court concludes that Plaintiff held the Mortgage as of June 10, 2010.
- 10. Because Plaintiff failed to establish by a preponderance of the evidence that it possessed the Note at the time it filed its complaint, the Court concludes that it lacks subject matter jurisdiction to adjudicate the rights of the parties and orders the matter dismissed without prejudice as to its re-filing.

IT IS SO ORDERED.

Date

8/30/10

JUDGE W. KENNETH ZUK

FILED

IN THE COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO

2010-11-30 AM 11:50
BARBARA A. STEVENSON
CLERK OF COMMON PLEAS COURT
CLERMONT COUNTY, OHIO
Case No.: 2008-07-0007

DEUTSCHE BANK
NATIONAL TRUST COMPANY
Plaintiff,

vs.

STEVE M. FECK et al

Defendants.

Judge W. Kenneth Zuk

ENTRY OVERRULING MOTION FOR RECONSIDERATION

The Motion for Reconsideration filed by the Defendant dated July 29, 2010 is DENIED.
Both parties are still requested to submit their proposed Findings of Fact and Conclusions of Law
by August 11, 2010.

IT IS SO ORDERED.



JUDGE, W. Kenneth Zuk
Clermont County Court of Common Pleas

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BARBARA A. STEVENSON
CLERK OF COMMON PLEAS COURT
CLERMONT COUNTY, OHIO