

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
ERIE COUNTY

Deutsche Bank National Trust Co.,  
c/o One West Bank, FSB

Appellant

v.

Gary L. Moore, et al.

Appellees

Court of Appeals No. E-11-081

Trial Court No. 2011 CV 0459

**DECISION AND JUDGMENT**

Decided: November 30, 2012

\* \* \* \* \*

Jason A. Whitacre and Laura C. Infante, for appellant.

Daniel L. McGookey and Lauren McGookey, for appellees.

\* \* \* \* \*

**HANDWORK, J.**

{¶ 1} This is an appeal from a judgment issued by the Erie County Court of Common Pleas in a home foreclosure case. Because we conclude that the trial court erred in dismissing the complaint, we reverse.

{¶ 2} Appellant, Deutsche Bank National Trust Company (“Bank”), sued appellees, Gary L. Moore and Stephanie A. Moore, seeking foreclosure on a promissory note and mortgage allegedly pertaining to residential real estate located at 4312 Bogart Road, Sandusky, Ohio, 44870. Appellees filed a motion to dismiss, arguing that, although appellant sought judgment on the note and mortgage, appellant failed to allege and prove that it is the “owner and holder” of both the note and mortgage. Appellees argued that appellant’s failure to allege such ownership constituted the failure to allege all essential elements required for an action in foreclosure. The trial court granted the motion.

{¶ 3} Appellant now appeals from that judgment, arguing the following sole assignment of error:

The Trial Court erred in granting the Motion to Dismiss of Defendants-Appellees Gary and Stephanie Moore pursuant to Ohio Civ.R. 12(B)(6) when it failed to apply the requirements for enforcement of a promissory note as set forth in R.C. 1303.31 and held that Plaintiff-Appellant was required to allege in its Complaint that it owned the Promissory Note.

{¶ 4} Appellate review of a trial court’s order granting a Civ.R. 12(B)(6) motion to dismiss is reviewed de novo. *Perrysburg Twp. v. Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, 814 N.E.2d 44, ¶ 5. “A motion to dismiss for failure to state a claim upon which relief can be granted is procedural and tests the sufficiency of the complaint.”

*State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.*, 65 Ohio St.3d 545, 548, 605 N.E.2d 378 (1992).

{¶ 5} Under the Ohio Rules of Civil Procedure, a complaint need only contain “a short and plain statement of the claim showing that the party is entitled to relief.” Civ.R. 8(A). The complaint need not state with precision all facts or evidence giving rise to a legal basis for recovery but must contain either allegations of every material point necessary to obtain recovery on any legal theory or allegations from which inferences fairly may be drawn on every material point. *Fancher v. Fancher*, 8 Ohio App.3d 79, 83, 455 N.E.2d 1344 (1st Dist.1982).

{¶ 6} “Notice pleading” under Civ.R. 8(A) and 8(E) requires that a claim concisely set forth only those operative facts sufficient to give “fair notice of the nature of the action.” *DeVore v. Mut. of Omaha Ins. Co.*, 32 Ohio App.2d 36, 38, 288 N.E.2d 202 (7th Dist.1972); *Welch v. Finlay Fine Jewelry Corp.*, 10th Dist. No. 01 AP-508, 2002-Ohio-565. The purpose of notice pleading is to simplify the alleged claims and statements of the relief demanded, so as to provide fair notice to the adverse party of those claims against him or her and an opportunity to respond. *See Fancher, supra*, at 82-83. However, if a complaint fails to state the “operative grounds underlying the claim for relief,” Staff Note to Civ. R. 8(A), neither the court nor the adverse party is required to supply the deficiency by some imaginative process (supposition), and the complaint is subject to dismissal under Civ.R. 12(B)(6). *See also Anderson v. BancOhio Natl. Bank*, 1st Dist. No. C-840913, 1985 WL 8844 (Nov. 27, 1985).

{¶ 7} R.C. 1303.31(A) provides that a “person entitled to enforce” a negotiable instrument includes “(1) The holder of the instrument \* \* \*.” An instrument is “indorsed in blank” if it does not identify the person to whom it is made payable. *See* R.C. 1303.25(A)-(B); *Deutsche Bank Natl. Trust Co. v. Traxler*, 9th Dist. No. 09CA009739, 2010-Ohio-3940. “When an instrument is indorsed in blank, the instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed.” R.C. 1303.25(B). A “bearer” is the person or entity in possession of an instrument. *See* R.C. 1301.01(E). R.C. 1301.01 defines a “holder” as: “[i]f the instrument is payable to bearer, a person who is in possession of the instrument” or “[i]f the instrument is payable to an identified person, the identified person when in possession of the instrument.”

{¶ 8} This court has held that a plaintiff need not allege or establish that it is both the holder and owner of a promissory note to be considered the real party in interest entitled to enforce the note. *See CitiMortgage, Inc. v. Schippel*, 6th Dist. No. E-11-041, 2012-Ohio-3511, ¶ 19, citing *U.S. Bank, N.A. v. Coffey*, 6th Dist. No. E-11-026, 2012-Ohio-721. Nevertheless, at minimum, the complaint should allege facts that would provide notice that the plaintiff is a holder, in addition to the nature of the action.

{¶ 9} In this case, whether by artifice or merely poor drafting, the complaint does not specifically allege that the Bank is a “holder” with the right to enforce the note. Rather, it states that “Plaintiff says it is due upon a certain promissory note \* \* \*.” The copy of the promissory note initially attached to the complaint, filed on June 28, 2011,

did not include an indorsement in blank, and the holder on that copy was the original lender, IndyMac Bank, F.S.B. On August 12, 2011, however, the Bank filed a “Notice of Filing Amended Exhibit ‘A’ to its Complaint,” which was a “copy of the complete promissory note.” Amended Exhibit A shows an undated indorsement in blank at the bottom of page five of the note, added at some point after appellees had signed it. The blank indorsement states as follows:

Pay to the Order of  
[blank space]  
Without Recourse  
IndyMac Bank, F.S.B.  
By: [signature]  
Antonia Gamban  
Vice President

No objection was made to the amended exhibit. Consequently, the complaint, along with amended Exhibit A, alleges sufficient facts to provide notice that the Bank is a holder, since it alleges that it holds the original note indorsed in blank by IndyMac. Whether that factual allegation is invalid is not a matter for determination on a motion to dismiss.

{¶ 10} In our view, despite the lack of a specific designation of the bank as a holder, the complaint, along with the later filed copy of the note, provides the minimum notice of the complaining party and the nature of the action filed, as required under Ohio pleading rules. Consequently, we conclude that the complaint was not so vague and ambiguous that appellees would not be able to frame responsive pleadings. In addition, based upon our decision in *Coffey, supra*, the Bank was not required to plead that it was both the holder and the owner.

{¶ 11} Accordingly, appellant's sole assignment of error is well-taken.

{¶ 12} The judgment of the Erie County Court of Common Pleas is reversed and the case is remanded for proceedings consistent with this decision. Appellees are ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment reversed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

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JUDGE

Mark L. Pietrykowski, J.

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JUDGE

Thomas J. Osowik, J.  
CONCUR.

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JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:  
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.