

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

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|----------------------------------|---|------------------------|
| STEVEN RUSHER, | : | APPEAL NO. C-150416 |
| | : | TRIAL NO. 14CV-28580 |
| and | : | |
| | : | <i>JUDGMENT ENTRY.</i> |
| TRACY L. RUSHER, | : | |
| | : | |
| Plaintiffs-Appellants, | : | |
| | : | |
| vs. | : | |
| | : | |
| SPRINGCASTLE AMERICA LLC, d.b.a. | : | |
| SPRINGCASTLE AMERICA FUNDING | : | |
| TRUST, | : | |
| | : | |
| and | : | |
| | : | |
| SPRINGCASTLE AMERICA FUNDING | : | |
| LLC, d.b.a. SPRINGCASTLE AMERICA | : | |
| FUNDING TRUST, | : | |
| | : | |
| Defendants-Appellees. | : | |

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Steven Rusher and Tracy L. Rusher appeal the judgment of the Hamilton County Municipal Court dismissing their claims against Springcastle America, LLC, (“Springcastle”) and Springcastle America Funding, LLC, (“SC America”) for violation of the Fair Debt Collection Practices Act (“FDCPA”).

In their complaint, the Rushers alleged that they were judgment debtors in an action initiated by Beneficial Ohio, Inc., in the Hamilton County Court of Common Pleas, and that Springcastle and SC America, assignees of Beneficial Ohio, Inc., had filed pleadings in that action to collect a debt “for a non-existent party.” Springcastle and SC America moved to dismiss the complaint because the common pleas court had substituted them as the party plaintiffs in the collection action, and the Rushers had not appealed that order. The trial court dismissed the Rushers’ complaint.

In a single assignment of error, the Rushers argue that the trial court improperly dismissed their complaint. When considering a Civ.R. 12(B)(6) motion to dismiss for failure to state a claim, a trial court is confined to the complaint and may not take judicial notice of court proceedings in another case. *See Harris v. Pro-Lawn Landscaping, Inc.*, 8th Dist. No. 97302, 2012-Ohio-498, ¶ 8-9. Under Civ.R. 12(B)(6), a court may consider matters outside the complaint only if the court converts the motion to dismiss into a summary-judgment motion and notifies the parties of its intention to do so. In this case, the record does not demonstrate that the trial court gave such notice of conversion. However, any error was not prejudicial because both parties relied on matters outside the complaint. *See EMC Mtge. Corp. v. Jenkins*, 164 Ohio App.3d 240, 2005-Ohio-5799, 841 N.E.2d 855, ¶ 12 (10th Dist.). Moreover, neither party disputes the substitution order by the common pleas court or the Rushers’ failure to appeal that order.

The substitution of Springcastle and SC America had the same effect as if they had initiated the collection action. Civ.R. 17(A); *see Midwest Business Capital v. RFS Mgt., LLC*, 11th Dist. Trumbull No. 2011-T-0030, 2011-Ohio-6214. The Rushers’ failure to appeal the substitution order precluded them from arguing in the

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municipal court that Springcastle and SC America were not the proper owners of the debt.

Consequently, the trial court did not err in dismissing the Rushers' complaint. We overrule the sole assignment of error and affirm the trial court's judgment.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., DEWINE and STAUTBERG, JJ.

To the clerk:

Enter upon the journal of the court on March 25, 2016
per order of the court _____.
Presiding Judge