

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

GMAC MORTGAGE, LLC,	:	APPEAL NO. C-110757
Plaintiff-Appellee,	:	TRIAL NO. A-1002967
vs.	:	
SUSAN E. NOEL,	:	<i>JUDGMENT ENTRY.</i>
Defendant-Appellant,	:	
and	:	
CHARLES O. NOEL, et al.,	:	
Defendants.	:	

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.

Defendant-appellant Susan Noel appeals from a summary judgment of the Hamilton County Common Pleas Court granting plaintiff-appellee GMAC Mortgage, LLC, a decree in foreclosure.

In a single assignment of error, Noel argues that the trial court erred in granting summary judgment to GMAC Mortgage, LLC. She first argues that the trial court erred in determining that GMAC Mortgage, LLC, was the real party in interest. The Ohio Supreme Court recently held that in the context of a mortgage foreclosure action the mortgage holder must establish an interest in the mortgage or promissory note at the time the complaint is filed in order to have standing to invoke the

jurisdiction of the common pleas court. *Fed. Home Loan Mtge. Corp. v. Schwartzwald*, 134 Ohio St.3d 13, 2012-Ohio-5017, ___N.E.2d ___, ¶ 28.

The record reflects that two days before GMAC Mortgage, LLC., filed this foreclosure action against Noel, Mortgage Electronic Recording Systems, as nominee of the GMAC Mortgage Corp., assigned its interest as the mortgagee to GMAC Mortgage, LLC. The assignment was recorded two days after the complaint had been filed. The note, mortgage, and the assignment were attached to complaint.

The mortgage specifically referred to the promissory note, executed in conjunction with the mortgage, and provided that “this security instrument secures to lender: (i) the repayment of the loan and all renewals, extensions, and modifications of the note, and (ii) the performance of the borrower’s covenants and agreements under this security instrument and the note.” Likewise, the note attached to the complaint referred to the mortgage. We, thus, find a clear intent to keep the note and mortgage together. *See Fed. Home Loan Mtge. Corp. v. Rufo*, 11th Dist. No. 2012-A-0011, 2012-Ohio-5930, ¶ 39-44.

Because the record reflects that GMAC Mortgage, LLC, had been assigned all interest in the mortgage and the note before it filed suit, it had standing to bring the foreclosure action against Noel. *Id.* The fact that the assignment was not recorded until two days after the complaint had been filed was not fatal. *See U.S. Bank Natl. Assn. v. Mitchell*, 6th Dist. No. S-10-043, 2012-Ohio-3732, ¶ 20. Because the record reflects that GMAC Mortgage, LLC, was the real party in interest at the time it initiated the foreclosure action, we find Noel’s argument meritless. *See Schwartzwald*, 134 Ohio St.3d 13, 2012-Ohio-5017, ___N.E.2d __ at ¶ 32.

Noel also argues that the trial court erred in granting summary judgment to GMAC Mortgage, LLC because genuine issues of material fact remained regarding its compliance with the Department of Veterans Affairs (“VA”) regulations.

Noel argues that section 11 of the note references the VA regulations and that GMAC Mortgage, LLC was required to strictly comply with the regulations set forth in 38 C.F.R. 36.3450(g) before initiating foreclosure proceedings against her. As support for her argument, she relies on a series of cases, which include this court’s decision in *Wells Fargo Bank, N.A. v. Isaacs*, 1st Dist. No. C-100111, 2010-Ohio-5811. But these cases are distinguishable because they involved loans insured by the Fair Housing Administration and administered by the Department of Housing and Urban Development (“HUD”). The HUD regulations, codified in 24 C.F.R. 203.604(b), specifically required the performance of the HUD regulatory requirements “at least 30 days before foreclosure [wa]s commenced.”

Here, the VA regulations merely set forth a general description of the servicing procedures a servicer of a VA loan must have in place. The regulations, moreover, provide that the only penalty for a servicer’s failure to comply with the regulations is a monetary sanction against the servicer. *See* 38 C.F.R. 36.4350(g)(2). There is no language in the VA regulations linking a servicer’s compliance with the regulatory requirements to its ability to commence foreclosure proceedings. Thus, we agree with GMAC Mortgage, LLC that the regulatory scheme itself, provides no basis for Noel’s strict-compliance argument. Noel, furthermore, has not pointed to any case law that supports her argument that strict compliance with the VA regulations is a condition precedent to foreclosure.

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In this case, the magistrate and the trial court concluded that there was no genuine issue of material fact that GMAC Mortgage, LLC had substantially complied with the VA regulations prior to initiating this foreclosure action against Noel. See *Wells Fargo Bank, N.A. v. Sowell*, 10th Dist. No. 11AP-622, 2012-Ohio-2987, ¶ 12-13. Based upon our review of the record, we agree with their determination. As a result, we overrule Noel's sole assignment of error and affirm the judgment of the trial court.

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.

SUNDERMANN, P.J., HENDON and DINKELACKER, JJ.

J. HOWARD SUNDERMANN, retired, from the First Appellate District, sitting by assignment.

To the clerk:

Enter upon the journal of the court on January 25, 2013

per order of the court _____.
Presiding Judge