

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

THE BANK OF NEW YORK MELLON	:	APPEAL NO. C-120644
TRUST COMPANY, N.A., AS TRUSTEE	:	TRIAL NO. A-1106321
FOR THE REGISTERED HOLDERS	:	
OF ACE SECURITIES CORPORATION	:	
HOME EQUITY LOAN TRUST,	:	JUDGMENT ENTRY.
SERIES 2004-HS1, ASSET BACKED	:	
PASS-THROUGH CERTIFICATES,	:	
Plaintiff-Appellant,	:	
vs.	:	
LEROY JONES,	:	
Defendant-Appellee,	:	
and	:	
JANE DOE, UNKNOWN SPOUSE, IF	:	
ANY OF LEROY JONES, 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.

Plaintiff-appellant, Bank of New York Mellon Trust Co., N.A., filed a complaint in foreclosure against defendant-appellee Leroy Jones and numerous other defendants, including Shernell Clark and Andrew Howard. While Clark and Howard filed an answer, Jones did not. The trial court granted the bank's motions for summary judgment against Clark and Howard and for a default judgment against Jones.

The bank appeals the trial court's judgment, arguing that it erred in failing to award it accrued interest and advances for the payment of real estate taxes and insurance premiums. But we cannot reach the merits of the appeal because the order from which the bank has appealed is not a final, appealable order.

The record shows that the case was heard by a magistrate. The magistrate's decision stated that "the Plaintiff has a valid note from the Defendant, Leroy Jones, and a mortgage from the Defendants, Leroy Jones, Shernell Clark aka Shernell D. Clark, and Andre Howard, which Mortgage is properly recorded in the Hamilton County, Ohio Records and is a first and best lien upon the premises[.]" It also stated that "the Defendant, Leroy Jones, is in default of payments on this Note and Mortgage since January 1, 2011, and that according to the terms of the Mortgage, there is now due Plaintiff the sum of \$108,405.20, plus interest thereon at the rate of 9% per annum." Further, it stated that "Plaintiff is entitled to a judgment in the sum of \$108,405.20 * * * and to foreclose upon the premises with five (5) days' equity of redemption."

The bank objected to the magistrate's decision. The trial court journalized an entry stating that "Plaintiff's Objections to the Magistrate's Decision * * * are overruled and the Magistrate's Decision * * * is hereby adopted by the Court." The bank filed its notice of appeal from this order.

In his decision, the magistrate determined the amount due, but he never stated who actually owed the funds, although it is inferable from the decision that Clark, Howard and Jones owed the funds. Further, the magistrate noted in his decision that the Hamilton County Auditor, Clerk of Courts, Treasurer and Child Support Enforcement Agency were parties in the action who had answered. But the

decision never determined their interests in the matter or their priorities in the proceeds from the foreclosure.

Several courts have held that a judgment entry ordering a foreclosure sale is not final and appealable under R.C. 2505.02 unless it resolves all of the issues involved in a foreclosure, including whether an order of sale is issued, what other liens must be marshaled before distribution is ordered, the priority of any liens, and the amounts due the various claimants. *Whipps v. Ryan*, 10th Dist. Franklin Nos. 07AP-231 and 07AP-232, 2008-Ohio-1216, ¶ 19; *Bank One, N.A., v. Demmler*, 5th Dist. Delaware No. 07 CAE 02 0013, 2007-Ohio-7167, ¶ 10; *Second Natl. Bank of Warren v. Walling*, 7th Dist. Mahoning No. 01-C.A.-62, 2002-Ohio-3852, ¶ 18-19. The judgment entry in this case merely adopted the magistrate's decision, which did not decide all of these issues. Therefore, it is not a final, appealable order under R.C. 2505.02.

Additionally, Civ.R. 54(B) language is required if the entry in a foreclosure case does not determine the rights of all the parties in the action. *See Bank of New York Mellon Trust Co. v. Shaffer*, 11th Dist. Geauga No. 2011-G-3051, 2012-Ohio-3638, ¶ 41, overruled on other grounds in *Fed. Home Loan Mort. Corp. v. Rufo*, 11th Dist. Ashtabula No. 2012-A-0011, 2012-Ohio-5930; *Whipps* at ¶ 21; *Bank One* at ¶ 13; *Alpine Terrace Condominium Unit Owners Assn., Inc. v. Volz*, 1st Dist. Hamilton No. C-910852, 1992 Ohio App. LEXIS 5542, *4-6 (Nov. 4, 1992). The judgment entry in this case does not contain Civ.R. 54(B) language.

An order is final only if it meets the requirements of both R.C. 2505.02 and Civ.R. 54(B), if applicable. *Nobel v. Colwell*, 44 Ohio St.3d 92, 540 N.E.2d 1381 (1989), syllabus; *Icon Constr., Inc. v. Statman, Harris, Seigel & Eyrich, LLC*, 1st Dist. Hamilton No. C-090458, 2010-Ohio-2457, ¶ 7. Because the order appealed from in this case did not meet

OHIO FIRST DISTRICT COURT OF APPEALS

those requirements, it is not a final, appealable order. Therefore, this court does not have jurisdiction to hear the appeal, and we have no choice but to dismiss it. *State ex rel. A & D Ltd. Partnership v. Keefe*, 77 Ohio St.3d 50, 52, 671 N.E.2d 13 (1996); *Dater v. Charles H. Dater Found., Inc.*, 166 Ohio App.3d 839, 2006-Ohio-2479, 853 N.E.2d 699, ¶ 20 (1st Dist.).

A certified copy of this judgment entry is 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., DINKELACKER and DEWINE, JJ.

To the clerk:

Enter upon the journal of the court on September 6, 2013
per order of the court _____.
Presiding Judge