

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

CORD REAL ESTATE, LLC,	:	APPEAL NO. C-140676
	:	TRIAL NO. A-1402637
Plaintiff-Appellant,	:	
	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
	:	
FIVE SEASONS SPORTS COUNTRY	:	
CLUB, LLC,	:	
	:	
Defendant-Appellee.	:	

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 Cord Real Estate LLC (“Cord”) appeals from the trial court’s grant of summary judgment for defendant-appellee Five Seasons Sports Country Club, LLC, (“Five Seasons”) on Cord’s claim to enforce rent obligations that Five Seasons incurred under a lease before legal title to the real property was transferred to a purchaser after a foreclosure sale. The trial court entered judgment for Five Seasons after determining that Cord lacked standing to bring the claim. We affirm.

Five Seasons, as lessee, and Cord, as lessor by assignment, were parties to a 1999 ground lease concerning real property on Snider Road in Hamilton County that Cord owned. Beginning in April 2012, Five Seasons stopped paying the rent due under the lease for reasons not pertinent to this appeal. Cord filed this action in May 2014. Five Seasons moved to dismiss, and later, for summary judgment, on the ground that Cord lacked standing to bring the claim and was not the real party in interest.

The unrefuted evidence in support of summary judgment demonstrated that after entering into the lease, Cord had executed a promissory note in favor of the North Side

Bank and Trust Company (“NSB”) that was secured by a mortgage on the property and a separate assignment of rents and leases (the “assignment”). Before Five Seasons had stopped paying rent, Cord had defaulted on the note and mortgage, and NSB had enforced its right to collect rents by notifying Five Seasons and Cord that all payments with respect to the lease agreement were to be made to NSB until further notice. NSB later assigned and transferred to Corporex its rights under the note and other loan documents, including the mortgage and assignment.

Then Corporex, an affiliated company of Five Seasons, foreclosed upon the mortgage and exercised its rights with respect to any remaining “collateral,” and subsequently purchased the property at a sheriff’s sale. The sale was subsequently confirmed and the sale proceeds were distributed. The foreclosure judgment did not set forth a specific amount owed Corporex at the time and the distribution did not set forth a specific deficiency owed after the sale. But Cord did not assert any claim to the unpaid rents during the foreclosure proceedings. A week after Cord’s filing of the complaint in this case, a deed was issued to Corporex that reflected in relevant part that Corporex took the deed subject to Five Seasons’ rights as lessee under the lease, and that Corporex gained all the rights, title and interest of Cord in the real property.

Based on this evidence, the trial court granted summary judgment for Five Seasons. Cord now appeals, challenging the grant of summary judgment in its sole assignment of error. We review the grant of summary judgment de novo, applying the standards set forth in Civ.R. 56. *See Comer v. Risko*, 106 Ohio St.3d 185, 186, 2005-Ohio-4559, 833 N.E.2d 712.

Under Ohio law, standing goes to the question of whether a party possesses “‘some real interest in the subject matter of the action.’” *Wells Fargo Bank, N.A. v. Horn*, 142 Ohio St.3d 416, 2015-Ohio-1484, 31 N.E.3d 637, ¶ 8, quoting *State ex rel. Dallman v. Franklin Cty. Court of Common Pleas*, 35 Ohio St.2d 176, 179, 298 N.E.2d 515 (1973).

Civ.R. 17(A) provides that “every action shall be prosecuted in the name of the real party in interest.” *See* Civ.R. 17(A). In other words, the action should be prosecuted in the name of the party who has under the substantive law the right sought to be enforced. *Shealy v. Campbell*, 20 Ohio St.3d 23, 25, 485 N.E.2d 701 (1985). In this case, the Civ.R. 17(A) inquiry is indistinguishable from the standing analysis.

Cord argues that a genuine issue of material fact remains as to whether it possesses some real interest in the subject matter of the action where it is unknown whether the uncollected rents when added to the foreclosure sale proceeds would have resulted in an excess. This alleged interest is based on Cord’s position that it suffered an injury traceable to Five Seasons’ failure to pay rent, and that the injury suffered is likely to be redressed by a money judgment against Five Seasons, where Corporex had a duty to collect the lease payments and to apply those payments accrued through the date the deed was recorded to reduce the amount of Cord’s indebtedness. Cord contends, therefore, that it established standing. We disagree.

Five Seasons’ nonpayment each month became “choses in action” belonging to the landlord at the time of their accrual, unless choses were assigned to another. *See 17 Mile, L.L.C. v. Kruzal*, 8th Dist. Cuyahoga No. 99358, 2013-Ohio-3005, ¶ 13. Here, Cord specifically assigned the choses to NSB, and under the terms of the assignment, the choses became NSB’s property after Cord defaulted on the note and mortgage and NSB enforced its rights by notifying both Cord and Five Seasons of its election. *See Franklin Banks v. Heritage Property Group, LLC*, 12th Dist. Clermont No. CA2013-10-078, 2014-Ohio-991, ¶ 22. NSB then assigned its rights to Corporex.

Cord has presented no authority to support its position that it had standing on May 2, 2014, to bring the breach of contract action against Five Seasons for the unpaid rent. This is not a case in which there is evidence that Cord retained a portion of the beneficial interest in the chose. *See Cincinnati Summer Opera Assn. v. Williams*, 58 Ohio

**OHIO FIRST DISTRICT COURT OF APPEALS**

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App. 513, 16 N.E.2d 1000 (1938). Cord's interest in the rents and in the chose to collect the rent, if any, would have been extinguished in the foreclosure action, when Corporex terminated all of Cord's interests related to the property to satisfy the unpaid debt secured by the property and the assignment. This case cannot be used as a collateral attack on the judgment arising out of the foreclosure proceedings.

Moreover, all rents accruing after the confirmed judicial sale belonged to the purchaser, Corporex, who became the owner of Cord's interest in the property and the successor lessor. *See Joshenosky v. Volrath*, 59 Ohio St. 540, 545-546, 53 N.E. 46 (1899); *Hemmer v. Leigh*, 6th Dist. Erie No. E-94052, 1995 Ohio App. Lexis 922 (March 17, 1995). Because Cord sued after the confirmation of the sale, it lacked standing for this additional reason. *See Abroms v. Synergy Bldg. Sys.*, 2d Dist. Montgomery No. 23944, 2011-Ohio-2180, ¶ 53.

Accordingly, we hold that Five Seasons established that no genuine issue of material fact existed and that it was entitled to judgment as a matter of law on the issue of standing. Thus, we overrule the assignment of error, and affirm the trial court's judgment.

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

**CUNNINGHAM, P.J., DEWINE and STAUTBERG, JJ.**

To the clerk:

Enter upon the journal of the court on October 21, 2015

per order of the court \_\_\_\_\_.

Presiding Judge