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COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

Deutsche Bank National,)	
)	
Plaintiff,)	Case No.: A 0702650
)	
vs.)	MOTION TO DISMISS AND DECLARE
)	FORECLOSURE A NULLITY
Mary Ann Orse et al,)	
)	Judge Martin
Defendant)	

Now comes the Defendant and Moves the court to Dismiss the Foreclosure in the above styled matter for the reason the Plaintiff did not own legal title at the time when the action was filed and has therefore had no standing in the within action.

Defendant further moves the court to declare the foreclosure and any sale of the property to be a nullity because the Plaintiff did not own legal title in the real estate foreclosed, as required by Ohio law at the time the action in foreclosure was filed.

.Respectfully submitted:



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Dated this 1st day of December, 2007

**MEMORANDUM IN SUPORT OF MOTION
STANDING AND SUBJECT MATTER JURISDICTION**

The Complaint for foreclosure pleads and assumes standing and jurisdiction, but there is no evidence either in the Complaint or attached Note and Mortgage that indicates that there is standing and/or subject matter jurisdiction existed with the Plaintiff at the time certain when the foreclosure Complaint was filed. . The lender named in the note and mortgage attached in the Complaint is Argent Mortgage Company, LLC; named Plaintiff in the Complaint is Deutsche Bank National. Deutsche Bank National has no standing to initiate this foreclosure.

Standing

Standing is determined as of the time the Complaint is filed. *Cleveland Branch, NAACP v. City of Parma, Ohio*, 263 F.3d 513,524 (6th Cir. 2001), *cert. denied*, 535 U.S. 971 (2002). While a determination of standing is generally based upon allegations in the Complaint, when standing is questioned, courts may consider evidence thereof. *See NAACP*, 263 F.3d at 523-30; *Senter v. General Motors*, 532 F.2d 511 (6th Cir. 1976), *cert. denied*, 429 U.S. 870 (1976).

To satisfy Article III's of the Constitution standing requirements, a plaintiff must show: (1) it has suffered an injury in fact that is concrete and particularized and actual or imminent, not conjectural or speculative. Plaintiffs have the burden of establishing standing. *Loren v. Blue Cross & Blue Shield of Michigan*, No. 06-2090, 2007 WL 2726704 at *7 (6th Cir. Sept. 20, 2007). If they cannot do so, their claims must be dismissed for lack of subject matter jurisdiction. *Id.* (citing *Central States Southeast & Southwest Areas Health and Welfare Fund v. Merck-Medco Managed Care*, 433 F.3d 181, 199 (2d Cir. 2005)).

STANDING AND SUBJECT MATTER JURISDICTION

While the Complaint for foreclosure pleads standing and jurisdiction, the obvious evidence submitted with the Complaint in this case indicates that standing and/or subject matter jurisdiction did not existed at the time certain when the foreclosure Complaint were filed . In this Complaint, the

Complaint, the Plaintiff alleges it is the holder and owner of a Note and Mortgage, however, the attached Note and Mortgage identify the mortgagee and promisee as the original lending institution Argent Mortgage Company .LLC, one other than the named Plaintiff. The Complaint makes no reference to the named Plaintiff in the recorded chain of title/interest along with the Complaint, that would identify the Plaintiff either as the original mortgage holder, or as trustee or successor-in-interest. The very filings and submissions lack consistency.

The Court must require of the Plaintiff to submit a copy of the actual Assignment of the Note and Mortgage, executed as of the date of the Foreclosure Complaint in order to establish standing. In the above-captioned case, no Assignment verifies the named Plaintiff to be the owner of the rights, title and interest under the Note and Mortgage.

The Court is obligated to carefully scrutinize all filings and pleadings in foreclosure actions, since the unique nature of real property requires contracts and transactions concerning real property to be in writing. R.C. § 1335.04. Ohio law holds that when a mortgage is assigned, the assignment is subject to the recording requirements of R.C. § 5301.25. *Creager v. Anderson* (1934), 16 Ohio Law Abs. 400 (interpreting the former statute, G.C. § 8543). “Thus, with regards to real property, before an entity assigned an interest in that property would be entitled to receive a distribution from the sale of the property, their interest therein must have been recorded in accordance with Ohio law.” *In re Ochmanek*, 266 B.R. 114, 120 (Bkrcty.N.D. Ohio 2000) (citing *Pinney v. Merchants’ National Bank of Defiance*, 71 Ohio St. 173, 177 (1904)). The convenience of the litigant does not supersede these obligations. Failure to correct this error results in the chain of title to the foreclosed property to be fatally flawed.

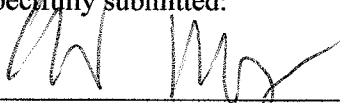
The courts have a duty to act as gatekeepers, assuring that only those who meet standing requirements may proceed. The Plaintiff falls woefully short of justifying their premature

filings, and utterly fails to satisfy their standing. (Case 3:07-cv-00286-TMR-MRM Document 24 Filed 11/15/2007).

CONCLUSION

For all the foregoing reasons, the above-captioned Foreclosure Complaint must be Dismissed and any subsequent Conveyance arising from the speciously foreclosed property declared a nullity.

Respectfully submitted:



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CERTIFICATE OF SERVICE

I, hereby certify that on December 1st, 2007 I have filed the forgoing MOTION TO DISMISS AND DECLARE FORECLOSURE A NULLITY with the Clerk of the Court using Fax transmission and mailing to the below listed attorney for the Plaintiff by US ordinary mail

Matthew C Gladwell (0075591)
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