

## **STANDING PROOF - NOT UNTIL AFTER THE COMPLAINT IS FILED**

The Supreme Court of Ohio recently decided *Wells Fargo Bank, N.A. v. Horn*, finding that a plaintiff in a foreclosure action must have standing at the time the complaint is filed, but need not prove its standing until sometime later in the case. In *Horn*, the plaintiff was the holder of the note and mortgagee of record by way of a name change from the original lender (from Norwest Mortgage, Inc. to Wells Fargo Home Mortgage, Inc.), and a subsequent merger (Wells Fargo Home Mortgage, Inc. merged into Wells Fargo Bank, N.A.). At the trial court level, Wells Fargo moved for summary judgment and submitted an affidavit with exhibits establishing the name change and the subsequent merger. The trial court granted summary judgment in favor of Wells Fargo. The court of appeals took up the issue of standing sua sponte and reversed.

The court of appeals, relying on *Fed. Home Loan Mtge. Corp. v. Schwartzwald*, held that a plaintiff in a foreclosure action must attach to its complaint documents proving it has standing at the time the complaint is filed. Because Wells Fargo had not attached documentation to its complaint establishing it was the successor to Wells Fargo Home Mortgage, Inc. and Norwest Mortgage, Inc., the court of appeals held Wells Fargo lacked standing to bring the foreclosure action.

The Ohio Supreme Court reversed. The court began its analysis with a review of *Schwartzwald*. Recall that in *Schwartzwald* the plaintiff filed its foreclosure action before it became the holder of the note or was properly assigned the mortgage. While the case was pending, the plaintiff then recorded the mortgage assignment and filed an affidavit stating it was the holder of the note. Both the trial court and the appellate court found this was sufficient to provide standing. The Ohio Supreme Court did not. The court found that where a plaintiff fails to establish it has an interest in a note or mortgage at the time it files a foreclosure action, it has no standing to invoke the jurisdiction of the court.

In the *Horn* decision, the court clarified that while a plaintiff in a foreclosure action must have standing at the time it files its complaint, nothing in *Schwartzwald* requires that the plaintiff also submit proof of standing at that time. Rather, a plaintiff may submit proof of its standing after the complaint is filed. In reaching this holding, the court reasoned that to find otherwise would contradict Ohio's long-established "notice pleading" requirements. The court also found that Civil Rule 10(D), which deals with attachments to pleadings, had no application in determining a plaintiff's standing.

As a practical matter, the *Horn* decision simply reiterates what *Schwartzwald* already established – a plaintiff must have standing at the time a foreclosure is filed. Now we know for certain that the proof can come later.