



# WHO'S THE HOLDER:

## The North Carolina Supreme Court adopts rule accepting stamped indorsements on promissory notes.

By: *Natasha Barone, Hutchens, Senter, Kellam & Pettit, P.A.*

In March, the North Carolina Supreme Court issued an opinion that clarified and defined what constitutes a valid endorsement of a note under North Carolina Law 1. The issue in Bass was whether the following stamped indorsement was valid under the Uniform Commercial Code2 (UCC):

Pay to the order of:  
Emax Financial Group, LLC  
without recourse

By: Mortgage Lenders Network USA, Inc.

The indorsement bore no written signature or names of any individuals signing on behalf of Mortgage Lenders Network USA, Inc. ("Mortgage Lenders")3.

Whether a party is a holder of a note for the purposes of a power of sale foreclosure is governed by the UCC4. The UCC defines a holder as "the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession5." A note can be transferred by indorsement of the original note and transfer of possession to the new holder6.

An indorsement is defined by the UCC as "a signature ... that alone or accompanied by other words is made on an instrument for the purpose of ... negotiating the instrument7." A signature can be "any symbol executed or adopted with present intention to adopt or accept a writing8." The UCC specifies that any signature "and its accompanying words is an indorsement unless the accompanying words, terms of the instrument, place of the signature, or other circumstances unambiguously indicate that the signature was made for a purpose other than indorsement9." Thus, a stamped signature qualifies as an indorsement and absent "unambiguous evidence to the contrary," a signature that "is not qualified in any way and appears in the place normally used for indorsement ... may be an indorsement.10"

The Supreme Court held that the indorsement was not qualified in any way and the original note "was indeed transferred in accordance with the stamp's clear intent.11" Under the broad definition of "signature" as adopted by the UCC, the North Carolina

Supreme Court held that "the stamp by Mortgage Lenders constitutes a signature" that operated to negotiate the note to Emax.12 Signatures are presumed to be authentic unless the opposing party can produce evidence to show the signature has been forged or is unauthorized13. Bass did not present any evidence that the indorsement was not authentic beyond a bare assertion that the indorsement was not authorized. The Court held that "her bare assertions, with no supporting evidence, did not amount to a 'sufficient showing of the grounds for the denial.14'" Thus, the Supreme Court held that the indorsement was valid and evidenced negotiation of the note to Emax.

This holding is significant because it overturned previous decisions restricting the definition of a valid indorsement. In light of Bass, North Carolina courts should accept any indorsements, stamped or written, as transfer of the note, absent unambiguous evidence to the contrary. Thus, the burden has now shifted to the debtor to present sufficient evidence, beyond mere assertions, that an indorsement is not authorized. ☐

1 In re Bass, --- N.C. ---, 738 S.E.2d 173 (2013). 2 Id. at 177. 3 Id. at 174-75. 4 Id. at 176.5 N.C. Gen. Stat. § 25-1-201(b)(21). 6 In re Bass, 738 S.E.2d at 176. 7 N.C. Gen. Stat. § 25-3-204(a) (2011). 8 N.C. Gen. Stat. § 25-1-201(b)(37)(2011). 9 N.C. Gen. Stat. § 25-3-204(a) (2011).10 In re Bass 738 S.E.2d at 176 quoting N.C. Gen. Stat. § 25-3-204 cmt. 1 (2011). 11 Id. at 177.12 Id.13 Id. 14 Id. (quoting N.C. Gen. Stat. § 25-3-308 cmt. 1).



# PASSING THE BUCK: Questioning the Constitutionality of Foreclosure Registration Ordinances

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With the recent rise in foreclosures has come an increase in vacant and abandoned homes throughout Ohio. Certain municipalities in the state have responded to the surplus of these blighted properties by instituting ordinances that require foreclosure plaintiffs to file a registration of foreclosure. These ordinances primarily seek to offset the financial burden that vacant properties create for a municipality. Foreclosure registration ordinances vary in severity of obligation and, in the worst cases, may impose civil and

criminal penalties on a plaintiff for non-compliance. While property preservation companies exist to assist plaintiffs who are eager to fulfill their duties, the constitutionality of these ordinances must first be examined.

The Supreme Court of Ohio has held that it is unconstitutional for

a municipality to place a duty upon a mortgagee to abate a nuisance. *Hausman v. City of Dayton*, 73 Ohio St. 3d 671 (Ohio 1995). The ordinance declared unconstitutional in *Hausman* proposed that mortgagees were liable to abate a nuisance as "owners" of the property.

In light of *Hausman*, the constitutionality of foreclosure registration ordinances becomes questionable. On one end of the spectrum, the City of Garfield Heights' registration ordinance, requiring a simple form to be filed along with

a small fee by a foreclosure plaintiff, is likely to pass constitutional muster as it is reasonable and in substantial relation to the public health, safety, morals, or general welfare of the city. *Yajnik v. Akron Dep't of Health, Housing Div.*, 101 Ohio St. 3d 106 (Ohio 2004). In contrast, the City of Youngstown's recently imposed ordinance, which requires a \$10,000 cash bond to be paid by each foreclosure plaintiff per vacant property, should receive greater constitutional scrutiny. Particularly, the Youngstown ordinance conflicts with *Hausman*, as it defines a mortgagee of real estate to be an owner and, as a consequence, liable for the property.

Furthermore, the cash bond required by the Youngstown ordinance secures the continual expenses of the vacant property and administrative fees established by the municipality. Importantly, the motive behind the cash bond requirement may be viewed as unreasonable and arbitrary, and not in substantial relation to the general welfare. Defining a mortgagee as an owner of a property, in order to provide a spending fund for a municipality, could be a violation of due process.

Although a constitutional challenge may appear at first to be a costly undertaking, foreclosure plaintiffs should strongly consider filing suit to attack ordinances similar to those in place in Youngstown. As no challenge has yet been initiated, these costly and onerous registration requirements now encompass more than 30 municipalities throughout the state of Ohio. If this police power remains unchecked, municipalities will continue to become emboldened and the foreclosure process will likely become even more cost prohibitive. ☐