

**CLEVELAND MUNICIPAL COURT
HOUSING DIVISION
CUYAHOGA COUNTY, OHIO
Judge Raymond L. Planka**

City of Cleveland

DATE: January 12, 2010

Plaintiff

-vs-

CASE NO.: 2009 CRB 11051

Deutsche Bank National Trust Co.

Defendant

JUDGMENT ENTRY

The court denies Defendant's motion to dismiss.

Defendant argues that it was not a responsible party under the City's Building Code and Housing Code on January 28, 2009 when the City issued to it a *Notice of Violations* ordering it to correct Building Code and Housing Code violations at 3318 Denison Avenue in Cleveland because the deed issued to it November 21, 2008 had not yet been recorded with the Cuyahoga County Recorder; it was recorded February 3, 2009. *Motion to Dismiss* at Exhibit B.

Defendant's argument fails for three reasons.

Defendant's argument first fails because the City's Building Code and Housing Code clearly impose responsibility on owners of property and Defendant was an owner at the time the deed was executed whether or not it had been recorded. "In Ohio, a deed does not have to be recorded to pass title. Whether or not recorded, a deed in Ohio passes title upon its proper execution and delivery, so far as the grantor is able to convey it. *Baldwin v. President, etc., of Bank of Massilon* (1853), 1 Ohio St. 141." *Wayne Bldg. & Loan Co. v. Yarborough* (1967), 11 Ohio St.2d 195, 213 228 N.E.2d 841. Defendant was therefore owner on at least November 21, 2008.

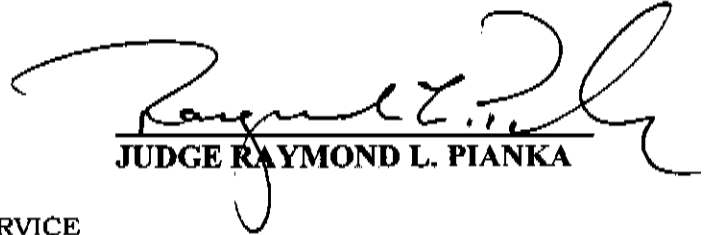
Defendant's argument second fails because the City can impose liability on a party based on the party's legal interest in property vested in it at the time of confirmation of a foreclosure sale, at which time the mortgagor's right of redemption is extinguished. *Hausman v. City of Dayton* (1995), 73 Ohio St.3d 671, 653 N.E.2d 1190, 1995-Ohio-277. Defendant was therefore an owner on November 10, 2008 when its purchase at foreclosure sale was confirmed. *Motion in Opposition* at Exhibit A.

Defendant's argument third fails because, even if Defendant became owner only on February 3, 2009, Defendant became on that date obligated to comply with the Notice of Violations that the City had already issued. "Any buyer . . . shall begin at the date of transfer to comply with any notice." C.C.O. §3103.09(e)(4)(C). The buyer can seek an

extension of time by notifying the City in writing of its plan for compliance. Id. By its own admission, Defendant became owner February 3, 2008 and thus obligated to begin to correct violations, certain items to be corrected by February 4, 2009 and others by February 27, 2009. The City's complaint alleges that Defendant failed to make the corrections by these compliance dates and that this failure continued through March 3, 2009.

Defendant's argument would also fail because Defendant did not obtain from the City any stipulation that the facts argued in Defendant's motion are true. Under Criminal Rule 12(C) the Court cannot base a dismissal on factual issues that must be presented at trial.

The Court sets this case for pre-trial conference _____, 2010 and for trial or change of plea _____, 2010.


JUDGE RAYMOND L. PIANKA

SERVICE

A copy of this judgment entry was sent to the parties by regular mail on
_ / _ / _.

Order emailed to D 1/15/10 ooe