

At an IAS Part 15 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at Civic Center, Borough of Brooklyn, City and State of New York, on the 23rd day of November 2009

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HSBC BANK USA, N.A. AS TRUSTEE FOR THE:
HOLDERS OF THE CERTIFICATES ISSUES BY :
DEUTSCHE ALT-B SECURITIES MORTGAGE :
LOAN TRUST, SERIES 2006-AB4, :
3476 Stateview Boulevard :
Ft. Mill, SC 29715 :

Plaintiff, :

-against- :

Index No. 34098/08

ABRAHAM SOFFER, 42ND STREET PROPERITES:
LLC., ANCOR CONSTRUCTION SERVICES, :
INC., ELI KAUFMAN, NEW YORK CITY :
DEPARTMENT OF FINANCE, NEW YORK :
CITY ENVIRONMENTAL CONTROL BOARD, :
NEW YORK CITY PARKING VIOLATIONS :
BUREAU, NEW YORK CITY TRANSIT :
ADJUDICATION BUREAU, PEOPLE OF THE :
STATE OF NEW YORK, SAMUEL FELDMAN :
LUMBER CO., INC., JOHN DOE (said name :
being fictitious, it being the intention of Plaintiff :
to designate any and all occupants of premises :
being foreclosed herein, and any parties, :
corporations or entities, if any, having or :
claiming an interest or lien upon the mortgaged :
premises.) :

Defendants :

-----X
PRESENT: HON. MARSHA L. STEINHARDT

The following papers numbered 1 to 5 read on this motion

	<u>Papers Numbered</u>
Notice of Motion & Cross Motion-Order to Show Cause and	
Affidavits (Affirmations) Annexed _____	1, 2

Answering Affidavit (Affirmation) _____	3 _____
Reply Affidavit (Affirmation) _____	4 _____
Affidavit (Affirmation) _____	_____
Pleadings-Exhibits _____	_____
Stipulations-Minutes _____	_____
<u>Filed Papers Defendant's Memorandum of Law</u> _____	5 _____

Plaintiff moves for an Order appointing a Referee to ascertain the amount due and to determine whether the mortgaged premises can be sold in parcels and dropping "John Doe" as a defendant and from the caption. Defendants, Abraham Soffer and 42nd Street Properties LLC, cross move for an Order pursuant to CLPR 3215 granting defendants leave to file a late answer and/or dismissing the complaint for failure to state a cause of action, or in the alternative, to dismiss for lack of standing.

Now, upon the foregoing and upon oral argument had thereon on November 12, 2009, plaintiff's motion is Denied and defendants', Abraham Soffer and 42nd Street Properties, LLC, motion to dismiss for lack of standing is Granted and deemed moot in all other respects.

This is an action to foreclose on real property located at 1040 42nd Street Brooklyn, NY 11219. On April 25, 2006 defendant Soffer executed a Mortgage and Note in the amount of \$975,000.00 with First Central Savings Bank. The Mortgage provided that Mortgage Electronic Registration Systems (MERS) would be First Central Savings Bank's nominee and the Mortgagee of record. On December 19, 2008, MERS executed and filed an Assignment of the Mortgage, but not the Note, to the plaintiff, HSBC Bank. HSBC Bank commenced this

foreclosure action by filing a Summons and Complaint on December 23, 2008.

This court must first decide whether defendant has standing to proceed with this action before it can address the other issues raised in the motion and cross motion.

The note secured by the mortgage is a negotiable instrument which requires indorsement on the instrument itself or on a paper so firmly affixed thereto as to become a part thereof in order to effectuate a valid assignment of the entire instrument. Slutsky v. Blooming Grove Inn, Inc., 147 A.D.2d 208 (2d Dept 1989); UCC 3-104, UCC 3-202(2), UCC 3-202 (3), (4). One who has been given a written assignment of a mortgage and an assignment of the note by indorsement on the face thereof has standing to maintain a foreclosure action. First National Trust Association v. Meisels, 234 A.D.2d 414 (2d Dept 1996). Well established case authorities have held that where a mortgage debt is represented by a bond or other instrument, an assignment of the mortgage without a concomitant assignment of the note or bond for which said mortgage was given as security is a nullity. Merritt v. Bartholick, 36 N.Y. 44; Flyer v. Sullivan 284 App.Div.697, 134 N.Y.S.2d 521; Beak v. Walts, 266 App.Div.900, 42 N.Y.S.2d 652; Manne v. Carlson, 49 App.Div. 276, 63 N.Y.S.2d 162. Foreclosure of a mortgage may not be brought by one who has no title to it and absent transfer of the debt, the assignment of the mortgage is a nullity. Kluge v. Fugazy, 145 A.D.2d 537 (2d Dept 1988). Guided by this principle, the Second Department in Mortgage Electronic Registration Systems, Inc. v. Coakley, found that the plaintiff in that case had standing to foreclose as it held both the note and the mortgage. 41 A.D.3d 674 (2d Dept 2007).

In this case, there is no evidence that the Note was assigned to plaintiff and, therefore, HSBC had no standing to institute this action. Consequently, this action is dismissed.

This constitutes the decision, opinion and order of this court.

Enter,



J. S. C.

KINGS COUNTY CLERK
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