

SCAN

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

**Present: Hon. William R. LaMarca
Supreme Court Justice**

**FORECLOSURE PART
NASSAU COUNTY**

LaSalle Bank National Association, as Trustee for the
registered holders of GSAMP Trust 2005-AHL2, Mortgage
Pass-Through Certificates, Series 2005-AHL2,
Plaintiff,

INDEX NO. 009598/09

-against-

MOTION SEQ. #1

Lori Zwisler; JP Morgan Chase Bank N.A., and "JOHN DOE #1
through "JOHN DOE #10", the last ten names being fictitious,
and unknown to plaintiff, the persons or parties intended being
the persons or parties, if any, having or claiming an
interest in or lien upon the mortgaged premises described
in the complaint,

Defendants.

Notice of Motion & Memo of Law.....	1
Answering Affidavits	2
Replying Affidavits.....	3
Pleadings, Exhibits, Stipulation, Letters.....	
Briefs: Plaintiff's/Petitioner's.....	
Defendant's/Respondent's.....	

Upon the foregoing papers, it is ordered that this motion by plaintiff bank for summary judgment (CPLR §3212) and an order of reference (RPAPL §1321) is denied and, upon searching the record, judgment is granted in favor of the defendant Lori Zwisler dismissing the complaint without prejudice.

Defendant is unrepresented. I have considered the allegations of her answer sufficient to place ownership of the mortgaged note at issue.

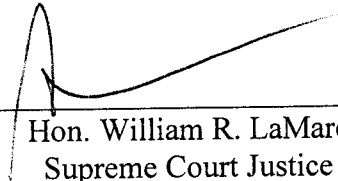
Standing is premised on an ASSIGNMENT OF MORTGAGE NEW YORK executed by MERS as nominee of the lender Home Funds Direct dated March 19, 2009 which contains the following provision "TOGETHER with the bond or note(s) or obligation(s) described or referred to in said mortgage...".

Assignment of a mortgage without a transfer of the note is a nullity (**Kluge v Fugazy**, 145AD2d 537). A mortgage passes to the holder of the mortgage as an "incident of the transfer" (see **MERS v Coakley**, 41 AD2d 674). Assuming arguendo, MERS authority as a nominee and a party to the mortgage to assign the mortgage, there has been a complete failure on plaintiff's

part to establish MERS' authority to transfer the mortgage note to which it is a non-party. Moreover, the note is transferred by endorsement on its face or an allonge, not by a secondary reference in another document.

Under the circumstances, the plaintiff has failed to establish it was the holder of the note and mortgage when it instituted the action. As a result, the action is properly dismissed (see **Klug v Fugazy**, 145 AD2d 539).

Dated: DEC 16 2009



Hon. William R. LaMarca
Supreme Court Justice

ENTERED

JAN 12 2010

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**