

SCAN

Short Form Order

**SUPREME COURT - STATE OF NEW YORK
TRIAL TERM, PART 20 NASSAU COUNTY**

PRESENT:

Honorable Karen V. Murphy
Justice of the Supreme Court

_____ x

IN THE MATTER OF

Index No. 5541/09

**MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC. as NOMINEE for ENCORE
CREDIT CORP.,**

**Motion Submitted: 10/23/09
Motion Sequence: 002**

Plaintiff(s),

-against-

**DIANA ESPOSITO a/k/a DIANE ESPOSITO;
BANK OF AMERICA, N.A.; NASSAU COUNTY
CLERK,**

Defendant(s).

_____ x

The following papers read on this motion:

- Notice of Motion/Order to Show Cause.....X
- Answering Papers.....
- Reply.....
- Briefs: Plaintiff's/Petitioner's.....
- Defendant's/Respondent's.....

Plaintiff moves for leave to renew a motion for an order to cancel, expunge and vacate a satisfaction of mortgage allegedly erroneously issued and recorded by the Nassau County Clerk.

Plaintiff has failed to submit proof of the facts alleged. It is moving as nominee of Encore Credit Corp., but failed to provide documentary evidence establishing that it is acting within the scope of its authority (see generally *Wells Fargo Bank, N.A. v. Saint Aubin*, 22 Misc.3d 1120(A), 880 N.Y.S.2d 877 (Sup. Ct., Kings Co., 2/10/09); *HSBC Bank USA, N.A.*

v. Vasquez, 24 Misc.3d 1239(A) (Sup. Ct., Kings Co., 8/21/09); *HSBC Bank USA, N.A. v. Betts*, 6 A.D.3d 735, 888 N.Y.S.2d 203 (2d Dept., 2009; *Mortgage Registration Systems, Inc. v. Holmes*, 24 Misc.3d 1228(A), 2009 N.Y. Slip Op. 51656 [Sup. Ct., Suffolk Co., 7/28/09]).

The supporting affidavits are in conflict with the recorded satisfaction in that the satisfaction executed by MERS as nominee for Encore states that there had been no assignments. There is a purported, and as yet unrecorded assignment from MERS as nominee for Encore to Bank of America dated March 12, 2009. This Court is left to question the motivation behind MERS' assignment of a mortgage previously satisfied of record during the pendency of this matter. There is no proof that MERS physically delivered the note and mortgage to Bank of America prior to the date of the assignment. (See *Wells Fargo Bank, N.A. v. Marchione* ___ N.Y.S.2d ___, 2009 WL 3380639 [2d Dept., 2009]).

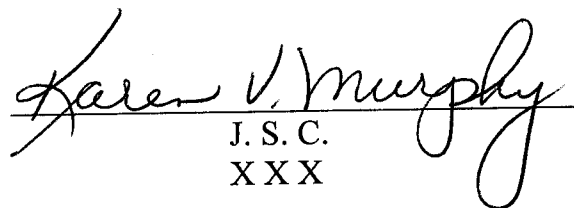
Furthermore, while the Plaintiff asserts that a search of records to determine if any other parties have any interest in the property was conducted, it is noted that the date of the search was November 28, 2008, the Petition was not filed until March 25, 2009 and it is not now known whether other parties have relied on the satisfaction, which was recorded on March 5, 2008. (See generally *Godstein v. Gold*, 106 A.D.2d 100, 483 N.Y.S.2d 375 (2d Dept., 1984); *Regions Bank v. Campbell*, 291 A.D.2d 437, 737 N.Y.S.2d 636 [2d Dept., 2002]).

Lastly, the Court is not satisfied that Plaintiff has complied with CPLR §2309(c).

The Petition is therefore dismissed.

The foregoing constitutes the Order of this Court.

Dated: December 30, 2009
Mineola, N.Y.


J. S. C.
X X X

ENTERED
JAN 20 2010
NASSAU COUNTY
COUNTY CLERK'S OFFICE