

COPY

SUPREME COURT - STATE OF NEW YORK  
IAS/TRIAL PART 9 - SUFFOLK COUNTY

PRESENT:

Hon. EDWARD D. BURKE  
Acting Justice of Supreme Court

Motion R/D : NONE - *Ex parte*  
Mot Seq # : 001 MD  
ORDER "NOT SIGNED"

MORTGAGE ELECTRONIC REGISTRATION  
SYSTEMS, INC. "MERS" as Nominee for WMC  
MORTGAGE CORPORATION,

Plaintiff(s),

- against -

DRUCKMAN & SINEL  
*Attorney for Plaintiff*  
242 Drexel Avenue  
Westbury, New York 11590

MAHENDRA RAMDOOLAR; MARIA M.  
PALACIO,  
"JOHN DOE 1" to "JOHN DOE 25", said names  
being fictitious, the persons or parties intended being the  
persons, parties, corporations or entities, if any, having or  
claiming an interest in or lien upon the mortgaged  
premises described in the complaint,

Defendant(s).

Upon the following papers numbered 1 to 3 read on *ex-parte* this motion by plaintiff for an order fixing the defaults of defendants and appointing a referee to compute; Notice of Motion/Order to Show Cause and supporting papers 1 to 3; Notice of Cross Motion and supporting papers \_\_\_\_\_; Answering Affidavits and supporting papers \_\_\_\_\_; Replying Affidavits and supporting papers \_\_\_\_\_; Other \_\_\_\_\_; (and after hearing counsel in support and opposed to the motion) it is


**ORDERED** that this *ex parte* motion (#001) by plaintiff for an order fixing the defaults of the known defendant[s], deleting as party defendants the unknown defendants named in the caption and for an order fixing the defaults of the defendants and appointing a referee to compute amounts due under the terms of the mortgage sought to be foreclosed herein is considered under CPLR 3215 and RPAPL Article 13 and is denied. The moving papers reflect that the above named plaintiff, a/k/a MERS, is not the owner of the subject mortgage nor the note for which said mortgage was given as security. The plaintiff was not the named as the lender in either the note or mortgage sought to be foreclosed herein. Instead, the plaintiff is identified in the mortgage indenture as a "separate corporation acting solely as nominee for the Lender and Lender's successors and assigns" and "FOR PURPOSES OF RECORDING THIS MORTGAGE, MERS IS THE MORTGAGEE OF RECORD"

Nor is there any proof that the plaintiff was the owner of the note and mortgage at the time this action was commenced *by reason of assignment or otherwise*. The failure to establish the plaintiff's ownership of the note and mortgage at the time of the commencement of this action

precludes the granting of the instant motion since the plaintiff is unable to establish "the facts constituting the claim(s)" against the defaulting defendants as required by CPLR 3215(f) (*Kluge v Fugazy*, 145 AD2d 537, 536 NYS2d 92; cf., *Federal National Mortgage Association v Youkelsone*, 303 AD2d 546, 755 NYS2d 730).

In view of the foregoing, the instant motion (#001) by the plaintiff for, *inter alia*, an order fixing the defaults of the named defendant and for the appointment of a referee to compute amounts due under the subject mortgage is denied and the proposed order of reference is marked "*Not Signed*".

Dated: December 6, 2005.

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EDWARD D. BURKE, A.J.S.C.