

SUPREME COURT - STATE OF NEW YORK  
IAS PART 6 - SUFFOLK COUNTY

**PRESENT:**

Hon. RALPH. T. GAZZILLO  
Justice of the Supreme Court

APPLICATION FOR AN  
ORDER VACATING PRIOR ORDER OF  
REFERENCE AND FOR ORDER OF  
REFERENCE  
#001 - MD

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MORTGAGE ELECTRONIC REGISTRATION :  
SYSTEMS, INC. :  
C/O Wells Fargo Bank, NA :  
3476 Stateview Boulevard :  
Ft. Mill, SC 29715 :

Plaintiff, :

- against - :

THOMAS STANDFORD, UNITED STATES :  
OF AMERICA ACTING THROUGH THE IRS, :

JOHN DOE (Said names being fictitious :  
it being the intention of Plaintiff to designate :  
any and all occupants of premises being :  
foreclosed herein.) :

Defendants. :

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STEVEN J. BAUM, P.C.  
Attorney for Plaintiff  
PO Box 1291  
Buffalo, N. Y. 14240

Upon the following papers filed on this *ex parte* application for an order of reference filed on Feb. 25, 2009: Proposed order of reference, as supported by the affirmation of plaintiff's counsel, Heather A. Johnson, dated Feb. 20, 2009 with supporting exhibits "A" - "Q", and upon due consideration and deliberation of the foregoing, it is

ORDERED that the prior order of reference issued by this Court on June 7, 2006 is vacated because it was mistakenly issued during the period of a bankruptcy stay; and it is further


ORDERED that plaintiff's application for an order of reference is denied for the following reasons:

This is a residential mortgage foreclosure action that was commenced on Jan. 28, 2005 concerning a mortgage given by the mortgagor-defendant on Nov. 10, 2003 on real property located at 197 Auburn Avenue, Shirley, New York. The plaintiff now seeks an order of reference pursuant to RPAPL 1321. According to the supporting affirmation of Heather A. Johnson, Esq., dated February 20, 2009, and the exhibits annexed thereto, the owner of the subject note and mortgage changed several times through a series of assignments. The original mortgage executed by the mortgagor-defendant Thomas Stanford on November 11, 2003 in favor of First Suffolk Mortgage Corp. was, on that date, assigned together with the underlying note to Mortgage Electronic Registration Systems, Inc. (hereinafter "MERS"). It appears that "MERS" then assigned the mortgage and note to the Secretary of Housing and Urban Development (hereinafter "HUD") on December 20, 2004, more than one year *prior* to commencement of the present action on January 28, 2005. On January 13, 2005 [which was two weeks prior to the commencement of this action], HUD assigned the mortgage and note to an entity known as "SF JV 2004-1 LLC", who, in turn, assigned same to EMC Mortgage Company on August 11, 2005. EMC Mortgage Company then assigned the mortgage and note to LaSalle Bank National Association on October 24, 2008, who is alleged to be the current holder of the note and mortgage.

Based upon the submissions herein, it appears that plaintiff "MERS" had no standing to commence the present action as it was not the owner of the mortgage and note when the action was commenced. As of January 28, 2005, "MERS" had already relinquished its interest in the note and mortgage and at no subsequent time did it regain an interest in the subject mortgage and note. In addition, the affidavit of merit that is attached in support of the moving papers as Exhibit C, was executed by "Certifying Officer" Carolyn Brown of "MERS" on February 13, 2009. "MERS" had no demonstrable interest or standing in this matter on Feb. 13, 2009 and, accordingly, the affidavit of its officer has no probative value.

Accordingly, the court denies the application for an order of reference. Plaintiff shall promptly serve a copy of this order with notice of entry upon all parties if any who have appeared in this action.

Dated: 5/12/10

  
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Ralph T. Gazzillo, J.S.C.

X Non Final Disposition