

Short Form Order(h)

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable, **DUANE A. HART** IAS PART 18  
Justice

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WM SPECIALTY MORTGAGE LLC.,	Index No.:7458/08
Plaintiff(s),	Motion Date:
-against-	July 30, 2008
	Cal. No.: 35
JORGE W. RAMIREZ; SHIRLEY O. PRIAS; PORTFOLIO RECOVERY ASSOC LLC.; NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE; CRIMINAL COURT OF THE CITY OF NEW YORK; NEW YORK CITY TRANSIT ADJUDICATION BUREAU; NEW YORK CITY ENVIRONMENTAL CONTROL BOARD; NEW YORK CITY PARKING VIOLATIONS BUREAU; "JOHN DOES" and "JANE DOES"	Mot. Seq. No.: 1
Defendant(s).	

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The following papers numbered 1 to 7 read on this motion.

	<u>PAPERS</u> <u>NUMBERED</u>
Notice of Motion-Affidavits-Exhibits .....	1 - 4
Answering Affidavits-Exhibits.....	5 - 7
Replying Affidavits.....	

Plaintiff, lender, seeks summary judgment to strike the answer of Defendants Ramirez and Prias and deem their answer an appearance and waiver. Plaintiff also seeks the appointment of a Referee to compute and determine the amount due and owing as well as an amendment of the caption to delete the names of Defendants John Does and Jane Does.

In brief, plaintiff alleges in its complaint that in April 2005 Fremont Investment and Loan gave Defendants Ramirez and Prias a \$459,000.00 mortgage and that they failed to make the required monthly payments and were in default at the commencement of the action.

Plaintiff claims that based on defendants' default, it is entitled to summary judgment.

Defendants acting Pro Se, submitted an answer.

Now with an attorney, defendants, in a cross-motion, moves for dismissal of the action for lack of standing. They also argue that their Pro Se answer, consisting of affirmative defenses should be accepted. They argue that the "bad faith, fraud or unconscionable conduct" by plaintiff is a valid affirmative defense.

As to the issue of standing defendants point out that the assignment of the loan made by MERS, as nominee for plaintiff was made more than three months after the action commenced. Thus, say defendants, the court does not have jurisdiction.

They argue further, do defendants, that MERS, as a nominee, cannot assign the mortgage and that there is no showing that MERS served the note and mortgage on March 7, 2008 or that it authority to assign the mortgage. Finally, defendants say that plaintiff has not stated a cause of action.

Upon review, defendants' motion is granted. Plaintiff has not shown that at the commencement of the action it owned the mortgage and note and therefore had standing to commence the action.

Dated: March 23, 2010

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J.S.C.