

At an IAS Term, Part 27 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 21st day of December 2007.

HON. ARTHUR M. SCHACK J.S.C.

P R E S E N T:

HON. ARTHUR M. SCHACK

Justice.

DEUTSCHE BANK NATIONAL TRUST COMPANY,
AS TRUSTEE OF AMERQUEST MORTGAGE
SECURITIES, INC., ASSET-BACKED PASS
THROUGH CERTIFICATES, SERIES 2004-R10,
UNDER THE POLING AND SERVICING
AGREEMENT DATED AS OF OCTOBER 1, 2004,
WITHOUT RECOURSE,

Plaintiff,

- against -

REINA EZAGUI, *et. al.*,

Defendants.

DECISION & ORDER

Index No. 3724/07

The following papers numbered 1 read on this motion:

Papers Numbered:

Proposed Order of Reference with Affidavits/Exhibits _____

_____ 1 _____

Plaintiff's application, upon the default of all defendants, for an order of reference for the premises located at 770 Lefferts Avenue, Brooklyn, New York (Block 1429, Lot 1255, County of Kings) is denied without prejudice, with leave to renew upon providing the Court with a satisfactory explanation to questions with respect to the assignment of this mortgage from the original lender, Ameriquest Mortgage Company, and the relationship between Ameriquest Mortgage Company and plaintiff.

Background

Defendant Reina Ezagui borrowed \$412,250.00 from Ameriquest Mortgage Company (AMERIQUEST) on August 22, 2004. The note and mortgage were recorded in the Office of the City Register, New York City Department of Finance on October 22, 2004 at City Register File Number (CRFN) 2004000656527. AMERIQUEST, by its Attorney in Fact, AMC Mortgage Services, Inc. (AMC), assigned the note and mortgage to plaintiff, DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE OF AMERIQUEST MORTGAGE SECURITIES, INC., ASSET-BACKED PASS THROUGH CERTIFICATES, SERIES 2004-R10, UNDER THE POLING AND SERVICING AGREEMENT DATED AS OF OCTOBER 1, 2004, WITHOUT RECOURSE (DEUTSCHE BANK), on February 7, 2007, with the assignment recorded on March 9, 2007 at CRFN 2007000128903.

According to plaintiff's application, defendant Ezaguis' default began with the nonpayment of principal and interest due on September 1, 2006. Yet, more than five

months later, plaintiff DEUTSCHE BANK was willing to take an assignment of a nonperforming loan from AMERIQUEST. Further, both assignor AMC, as Attorney in Fact for AMERIQUEST, and assignee, DEUTSCHE BANK, have the same address, 505 City Parkway West, Orange, CA 92868. Plaintiff's "affidavit of amount due," submitted in support of the instant application for a default order of reference was executed by Tamara Price, on February 16, 2007. Ms. Price states that "I am the Vice President for DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE OF AMERIQUEST MORTGAGE SECURITIES, INC., ASSET-BACKED PASS THROUGH CERTIFICATES, SERIES 2004-R10, UNDER THE POLING AND SERVICING AGREEMENT DATED AS OF OCTOBER 1, 2004, WITHOUT RECOURSE (DEUTSCHE BANK." However, the February 7, 2007 assignment from AMERIQUEST, by AMC, its Attorney in Fact, is executed by Tamara Price, Vice President of AMC. The Tamara Price signatures on both the February 7, 2007 affidavit and the February 16, 2007 assignment are identical. Did Ms. Price change employers from February 7, 2007 to February 16, 2007? The Court is concerned that there may be fraud on the part of AMERIQUEST, or at least malfeasance. Before granting an application for an order of reference, the Court requires an affidavit from Ms. Price, describing her employment history for the past three years. Further, irrespective of her employment history, Ms. Price must explain why DEUTSCHE BANK would purchase a nonperforming loan from AMERIQUEST, and why DEUTSCHE BANK shares office

space, in Orange, California, with AMERIQUEST.

Conclusion

Accordingly, it is

ORDERED, that the application of plaintiff, DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE OF AMERIQUEST MORTGAGE SECURITIES, INC., ASSET-BACKED PASS THROUGH CERTIFICATES, SERIES 2004-R10, UNDER THE POLING AND SERVICING AGREEMENT DATED AS OF OCTOBER 1, 2004, WITHOUT RECOURSE, for an order of reference for the premises located at 770 Lefferts Avenue, Brooklyn, New York (Block 1429, Lot 1255, County of Kings), is denied without prejudice; and it is further

ORDERED, that leave is granted to plaintiff, DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE OF AMERIQUEST MORTGAGE SECURITIES, INC., ASSET-BACKED PASS THROUGH CERTIFICATES, SERIES 2004-R10, UNDER THE POLING AND SERVICING AGREEMENT DATED AS OF OCTOBER 1, 2004, WITHOUT RECOURSE, to renew its application for an order of reference for the premises located at 770 Lefferts Avenue, Brooklyn, New York (Block 1429, Lot 1255, County of Kings), upon presentation to the Court of an affidavit from Tamara Price, within thirty (30) days from the date of this decision and order, with the following: a description of her employment history for the past three years; an explanation of why plaintiff DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE OF

AMERIQUEST MORTGAGE SECURITIES, INC., ASSET-BACKED PASS THROUGH CERTIFICATES, SERIES 2004-R10, UNDER THE POLING AND SERVICING AGREEMENT DATED AS OF OCTOBER 1, 2004, WITHOUT RECOURSE, purchased a non-performing loan from AMERIQUEST MORTGAGE COMPANY; and, an explanation of why DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE OF AMERIQUEST MORTGAGE SECURITIES, INC., ASSET-BACKED PASS THROUGH CERTIFICATES, SERIES 2004-R10, UNDER THE POLING AND SERVICING AGREEMENT DATED AS OF OCTOBER 1, 2004, WITHOUT RECOURSE, shares office space with AMERIQUEST MORTGAGE COMPANY at 505 City Parkway West, Orange, CA 92868.

This constitutes the Decision and Order of the Court.

E N T E R



HON. ARTHUR M. SCHACK
J. S. C.

HON. ARTHUR M. SCHACK J.S.C.