

SUPREME COURT - STATE OF NEW YORK  
I.A.S. TERM, PART XIV - SUFFOLK COUNTY

**PRESENT:**

**Hon. WILLIAM L. UNDERWOOD, JR.**

MORTGAGE ELECTRONIC REGISTRATION  
SYSTEMS, INC., as Nominee for GREENPOINT  
MORTGAGE FUNDING, INC.,

Plaintiff(s),

-against-

GABY J. BAXTER, FRANCIS M. COSTELLO, ANDREA  
COSTELLO, STATE OF NEW YORK ON BEHALF OF  
UNIVERSITY HOSPITAL,

"JOHN DOE NO. 1" to "JOHN DOE NO. XX," inclusive,  
the last twenty names being fictitious and unknown to  
plaintiff, the persons or parties intended being the tenants,  
occupants, persons or corporations, if any, having or  
claiming an interest in or lien upon the premises described in  
the complaint.

Defendant(s).

**ORIG. RETURN DATE:**

**FINAL RETURN DATE:**

**MTN. SEQ. #: EXPARTE ORDER/NOT SIGNED  
MD**

**PLTF'S/PET'S ATTORNEY:**

CULLEN and DYKMAN BLEAKLEY PLATT, LLP  
Garden City Center, 1st Floor  
Quentin Roosevelt Boulevard  
Garden City, New York 11530

**DEFT'S/RESP ATTORNEY:**

JAMES G. FOUASSIER, ESQ.  
ASSISTANT ATTORNEY GENERAL  
2100 Middle Country Road  
Centereach, New York 11720-3589


Upon the following papers numbered 1 to\_\_ read on this motion \_\_\_\_\_  
Notice of Motion/Order to Show Cause and supporting papers \_\_\_\_; Notice of Cross Motion and supporting papers \_\_\_\_;  
Answering Affidavits and supporting papers \_\_\_\_; Replying Affidavits and supporting papers \_\_\_\_; Other \_\_\_\_; (and after  
hearing counsel in support of and opposed to the motion) it is,

ORDERED that this *ex parte* application by the plaintiff for an order, *inter alia*, fixing  
the defaults of the defendant mortgagors and other known defendants in answering the  
summons and complaint served in this mortgage foreclosure action and for an order  
appointing a referee to compute amounts due under the mortgage sought to be foreclosed  
herein is considered under CPLR 3215 and Article 13 of the Real Property Actions and  
Proceedings Law (RPAPL) and is denied.

The moving papers established that the plaintiff has no ownership interest in the subject note and mortgage sought to be foreclosed herein by assignment or otherwise. Since only the owner of the note and mortgage at the time of the commencement of the action has standing to prosecute claims for foreclosure of the mortgage (*Kluge v Fugazy*, 145 AD2d 537, 536 NYS2d 92 [1988]), the plaintiff here cannot establish the *prima facie* validity of the claims against the defendants as is required by CPLR 3215(f) (see, *Gagen v Kipany Productions, Ltd.*, 289 AD2d 844, 735 NYS2d 225 [2001], and the cases cited therein).

In view of the foregoing, the instant application is denied and the proposed order appointing a referee to compute has been marked "*Not signed*".

**Dated: October 8, 2004**

  
HON. WILLIAM L. UNDERWOOD, JR.  
J.S.C.