

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE PETER J. KELLY  
Justice

IAS PART 16

MORTGAGE ELECTRONIC REGISTRATION  
SYSTEMS, INC., as nominee for U.S.  
BANK, N.A. f/k/a FIRSTAR BANK, N.A.  
successor in interest to ALLIANCE  
MORTGAGE BANKING CORP.,

INDEX NO. 30976/02

MOTION

DATE FEBRUARY 17, 2004

MOTION

CAL.NO. 1

Plaintiff,

- against -

CARMEN POBLETE,

Defendant.

The following papers numbered 1 to 6 read on this motion by plaintiff to appoint a referee to compute.

PAPERS  
NUMBERED

Notice of Motion/Affid(s) - Exhibits..... 1 - 6

The plaintiff's ex parte application for an order appointing a referee to compute and to amend the caption of the action is resolved as follows.

An examination of the plaintiff's papers submitted herein reveals that they do not contain proof of plaintiff's standing to commence this action. The papers assert the plaintiff, Mortgage Electronic Registration Systems, Inc. (MERS), is the "nominee" for the original mortgagee, Alliance Mortgage Banking Corp. The papers also assert that U.S. Bank, formerly known as First Star Bank, is the successor in interest to the original mortgagee. Furthermore plaintiff has submitted a certificate of merger between U.S. Bank of Oregon and U.S. Bank of Minnesota. Thus the court is unable to ascertain from the papers which party is the record owner of the mortgage, whether or not the mortgage was assigned, and the nature of the relationship between the mortgagee and the plaintiff.

Additionally, plaintiff has submitted, inter alia, an affidavit in support from "Gregg V. Speer, Vice President," who claims to be familiar with the books and records maintained by the plaintiff. However the Mr. Speer has failed to identify what entity he represents. Additionally,

the affidavit does not specifically recite the facts of this particular default, the facts concerning the subject property, and when the default notice was sent. Indeed the affidavit only contains boilerplate recitations that could relate to any property or defendant.

Furthermore, the copy of the mortgage included in the plaintiff's papers is barely legible.

Accordingly, as plaintiff has not established its standing to institute this action or prima facie entitlement to relief the proceeding is dismissed

Dated: MARCH 10, 2004



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**Peter J. Kelly, J.S.C.**