

**SUPREME COURT - STATE OF NEW YORK  
IAS/TRIAL PART 9 - SUFFOLK COUNTY**

**PRESENT:**

Hon. EDWARD D. BURKE  
Acting Justice of Supreme Court

Motion R/D : **NONE - Ex parte**  
Mot Seq # : **002 MD**  
**ORDER "NOT SIGNED"**

MORTGAGE ELECTRONIC REGISTRATION  
SYSTEMS, INC. as Nominee for WMC  
MORTGAGE CORP,

Plaintiff(s),

- against -

MAHENDRA RAMDOOLAR; MARIA M. PALACIO,  
"JOHN DOE #1" to "JOHN DOE #25", said names  
being fictitious, the persons or parties intended being the  
persons, parties, corporations or entities, if any, having or  
claiming an interest in or lien upon the mortgaged  
premises, described in the complaint,

Defendant(s).

**DRUCKMAN & SINEL**  
*Attorney for Plaintiff*  
242 Drexel Avenue  
Westbury, New York 11590

Upon the following papers numbered 1 to 3 read on ex-parte this motion by plaintiff for an order fixing the defaults of defendants and appointing a referee to compute; Notice of Motion/Order to Show Cause and supporting papers 1 to 3; Notice of Cross Motion and supporting papers \_\_\_\_\_; Answering Affidavits and supporting papers \_\_\_\_\_; Replying Affidavits and supporting papers \_\_\_\_\_; Other \_\_\_\_\_; (and after hearing counsel in support and opposed to the motion) it is

**ORDERED** that this *ex parte* motion (#002) by the plaintiff in this mortgage foreclosure action for, *inter alia*, an order substituting a new entity as the plaintiff in the place and stead of the named, moving plaintiff and for an order appointing a referee to compute amounts due under the mortgage for which foreclosure is sought herein is considered under CPLR 3025, 3215 and RPAPL 1321 and is denied.

As indicated in a prior order dated December 6, 2005 (Burke, J.), the plaintiff, Mortgage Electronic Registration Systems, Inc., was not the owner of the note and mortgage at the time this action was commenced. The court thus found that the plaintiff's complaint failed to state cognizable claims against the defendants (*Kluge v Fugazy*, 145 AD2d 537, 536 NYS2d 92; *see, also, Katz v East-Ville Realty Company*, 249 AD2d 243, 672 NYS2d 308) and that the plaintiff was thus not entitled to the default judgment it demanded on its prior application (CPLR 3215[f]).

On the instant application, the plaintiff purportedly assigned its interest in this subject note and mortgage to an entity known as HSBC Bank USA, National Association as Trustee for MLMI Series 2005-WMC. Since, however, the plaintiff, Mortgage Electronic Services, Inc. was not the owner of the note and mortgage at the time of the purported assignment, the named assignee, HSBC Bank USA, National Association as Trustee for MLMI Series 2005-WMC, acquired no title thereto. The plaintiff's demand for substitution of said entity as the plaintiff in this action is thus denied.

In addition, a substitution of a party plaintiff, such as that demanded here, may not be accomplished by a mere caption amendment. Rather, the substitution of a new party plaintiff would require its participation by its consent and/or its formal joinder in this action as contemplated by CPLR 1003 and the filing of an amended complaint by the proposed new plaintiff wherein it alleges facts which constitute cognizable claims against the defendants. Since there was no joinder of the proposed new plaintiff, by consent or service, nor was that any demand by it for leave to serve an amended complaint, the substitution of HSBC Bank USA, National Association as Trustee for MLMI Series 2005-WMC as a party plaintiff would have been precluded even if a valid and recorded assignment by the owner of the note and mortgage had been attached to the moving papers.

In view of the foregoing, the instant motion (#002) by the plaintiff is denied and the proposed order of reference is marked "*Not Signed*".

Dated: March 27, 2006.

  
EDWARD D. BURKE, A.J.S.C.