

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART XXXVI SUFFOLK COUNTY

PRESENT:
HON. PAUL J. BAISLEY, JR., J.S.C.

INDEX NO.: 16646/2005
MOTION DATE: 07/05/2007

-----X
MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS INC. AS NOMINEE FOR INTERVALE
MORTGAGE CORPORATION,

MOT. NO.: 003 MD

Plaintiff,

-against-

JULIA WILLIAMS, MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC., AS NOMINEE
FOR INTERVALE MORTGAGE CORPORATION,
THE CHASE MANHATTAN BANK F/K/A
CHEMICAL BANK, WILSHIRE CREDIT CORP.,
JOHNNY HARPER,

DEFENDANTS PRO SE:

JULIA WILLIAMS
615 Broadway, #25
Amityville, New York 11701

Defendants.
-----X

PLAINTIFF'S ATTORNEY:

STEVEN J. BAUM, P.C.
By: David S. Lee, Esq.
Atty. for JP Morgan Chase Bank
900 Merchants Concourse, Suite 412
Westbury, New York 11590

THE CHASE MANHATTAN BANK
F/K/A CHEMICAL BANK
One Chase Plaza
New York, New York 10036

WILSHIRE CREDIT CORPORATION
14523 SW Millikan Way
Beaverton, Oregon 97005

REFEREE:

DENNIS O'DOHERTY, ESQ.
25 Candee Avenue
Sayville, New York 11782

JOHNNY HARPER
545 Lakeway Drive
Babylon, New York 11704

Upon the following papers numbered 1 to 6 read on this motion to disburse surplus monies; Notice of Motion/ Order to Show Cause and supporting papers 1-6; ~~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 the motion (motion sequence no. 003) of J.P. Morgan Chase Bank as Trustee for the Home Equity Trust Series 2004-3 for an order directing that the Suffolk County Treasurer pay and disburse the surplus monies remaining from the foreclosure sale of the subject premises to Steven J. Baum, P.C., attorneys for the movant, is determined as follows:

The claimant, J.P. Morgan Chase Bank as Trustee for the Home Equity Trust Series 2004-3, purports to be the assignee, pursuant to a corporate assignment of mortgage/deed of trust executed by Mortgage Electronic Registration Systems, Inc. ("MERS"), as nominee for Decision

WWW.STOPFORCLOSAUD.COM

One Mortgage Company, LLC, of a certain mortgage executed by defendant-mortgagor JULIA WILLIAMS and delivered to MERS as nominee for Intervale Mortgage Corp., which mortgage is alleged to be a subordinate lien to the mortgage previously foreclosed in this action. The claimant's submissions do not establish the chain of assignments from the original mortgagee, Intervale Mortgage Corp., and the proofs submitted by the claimant are insufficient to establish that it is the current owner and holder of the note and mortgage that purportedly entitle it to the surplus monies deposited with the Suffolk County Treasurer. The Court notes that even if MERS has authority to assign the subject mortgage (which is not apparent from the submissions), there is no proof of its authority to assign the underlying note, which it apparently does not own. Since a mortgage may not be separated from the underlying debt (*Merritt v. Bartholick*, 36 N.Y. 44, 45, 34 How. Pr. 129 (1867)), the issue of the claimant's standing to claim the surplus monies is not established by the record before the Court.

In light of the foregoing, the motion is granted to the extent that the matter is referred to Dennis O'Doherty, Esq., as referee, to ascertain and report on the validity of claimant's claim to the surplus monies and to ascertain and report the amount due to the claimant or any other person who has a lien on the surplus monies, to ascertain the priorities of the several liens thereon and report with all convenient speed to the end that on the coming in and confirmation of such report, such further order may be made for the distribution of said surplus monies as may be just.

Dated: October 30, 2007

RON PAUL L. BAISLEY, JR.

J.S.C.