

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

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

INDEX NO.: 22751-06  
MOTION DATE:

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U.S. BANK NATIONAL ASSOCIATION, AS  
TRUSTEE FOR THE STRUCTURED ASSET  
INVESTMENT LOAN TRUST, 2005-6,

MOT. NO.: 002 MD

Plaintiff,

-against-

DANIELLE MOSS A/K/A DANIELLE  
SANDELLA, BNC MORTGAGE, INC., GMAC  
INTEGRON INSURANCE COMPANY, JOHN  
CHRISTOPHER PRATHER, DEPUTY  
ATTORNEY GENERAL IN CHARGE FOR THE  
NEW YORK STATE ATTORNEY GENERAL'S  
ORGANIZED CRIME TASK FORCE,  
MORTGAGE ELECTRONIC REGISTRATION  
SYSTEMS, INC., AS HOLDER AND NOMINEE  
FOR BNC MORTGAGE, INC., SIM 3  
MANAGEMENT CORP. D/B/A EMPIRE  
BONDING AGENCY, LOUIS SANDELLA,

Defendants.

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**PLAINTIFF'S ATTORNEY:**  
STEVEN J. BAUM, P.C.  
By: Michael C. Doyle, Esq.  
220 Northpointe Parkway, Suite G  
Amherst, New York 14228

**REFEREE:**  
KENNETH A. DEEGAN, ESQ.  
34 Dewey Street  
P.O.Box 570  
Huntington, New York 11743

Upon the following papers numbered 1 to 5 read on this *ex-parte* motion for judgment of foreclosure and sale ;  
Notice of Motion/ Order to Show Cause and supporting papers 1-5 ; 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 *ex-parte* motion (motion sequence no. 002) of plaintiff for a judgment  
of foreclosure and sale is denied. It is well established that a mortgage foreclosure action may be  
commenced only by the owner of the note and mortgage at the time of commencement of the  
action *Kluge v. Fugazy*, 145 A.D.2d 537, 536 N.Y.S.2d 92 (2d Dept. 1988). The complaint  
herein fails to allege that the plaintiff is the owner and holder of both the note and the mortgage.  
Accordingly, the pleadings do not establish the existence of a valid cause of action for foreclosure.

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*Beaton v. Transit Facility Corp.*, 14 A.D.3d 637, 789 N.Y.S.2d 314 (2d Dept. 2005); *Green v. Dolphy Constr. Co.*, 187 A.D.2d 635, 590 N.Y.S.2d 238 (2d Dept. 1992). Moreover, the submissions reflect that the purported assignment to plaintiff of the mortgage sought to be foreclosed herein was executed by Mortgage Electronic Registration Systems, Inc. ("MERS") as nominee for BNC Mortgage, Inc. ("BNC"), on September 13, 2006, after the commencement of this action on August 17, 2006. The submissions do not establish that MERS was the owner of the note and mortgage at the time of the purported assignment, or that it otherwise had authority to assign ownership of the note and mortgage to plaintiff. See *LaSalle Bank National Association v. Lamy*, 2006 NY Slip Op. 51534U, 12 Misc. 3d 1191A, 824 N.Y.S.2d 769 (Sup. Ct. Suffolk Cty. 2006). Even if the purported assignment by MERS were valid, the submissions reflect that at the time of the commencement of this action plaintiff was not the owner of the mortgage and note sued upon.

In light of the foregoing, the motion for a judgment of foreclosure and sale is denied.

Proposed order marked "not signed."

Dated: November 5, 2007

HON. PAUL J. BAISLEY, JR.

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J.S.C.

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