

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

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

INDEX NO.: 28099/2006

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WELLS FARGO BANK, N.A. ON BEHALF OF  
MORGAN STANLEY ABS CAPITAL 1 INC.  
TRUST 2005-WMC6 MORTGAGE PASS-  
THROUGH CERTIFICATES, SERIES 2005-  
WMC6  
c/o COUNTRYWIDE HOME LOANS,

MOTION DATE: 03/05/2007

MOT. NO.: 001 MD  
(EX-PARTE ORDER NOT SIGNED)

Plaintiff,

-against-

ERIC GOLDEN, COUNTRYWIDE HOME  
LOANS, INC., HUNTINGTON HOSPITAL  
ASSOCIATION, MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC., AS NOMINEE  
FOR WMC MORTGAGE CORP., NEW YORK  
STATE DEPARTMENT OF TAXATION AND  
FINANCE, PEOPLE OF THE STATE OF NEW  
YORK, TOWN OF BABYLON SUPERVISOR,

**DEFENDANTS' ATTORNEYS:**

DENNIS M. COHEN, ESQ.  
BABYLON TOWN ATTORNEY  
By: Chelley Gordon, Esq.  
200 East Sunrise Highway  
Lindenhurst, New York 11757

**NEW YORK STATE ATTORNEY  
GENERAL**

By: Cydney Kelly, Esq., Assistant Atty.  
General  
400 Statler Towers  
Buffalo, New York 14203

**DEFENDANTS PRO SE:**

ERIC GOLDEN  
215 Sampson Avenue  
Ronkonkoma, Ne Yrok 07653

JOHN DOE (Said name being fictitious, it being the  
intention of Plaintiff to designate any and all  
occupants of premises being foreclosed herein, and  
any parties, corporations or entities, if any, having or  
claiming an interest or lien upon the mortgaged  
premises.),

COUNTRYWIDE HOME LOANS, INC.  
80 State Street  
Albany, New York 12207

Defendants.

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HUNTINGTON HOSPITAL ASSOCIATION  
270 Park Avenue  
Huntington, New York 11743

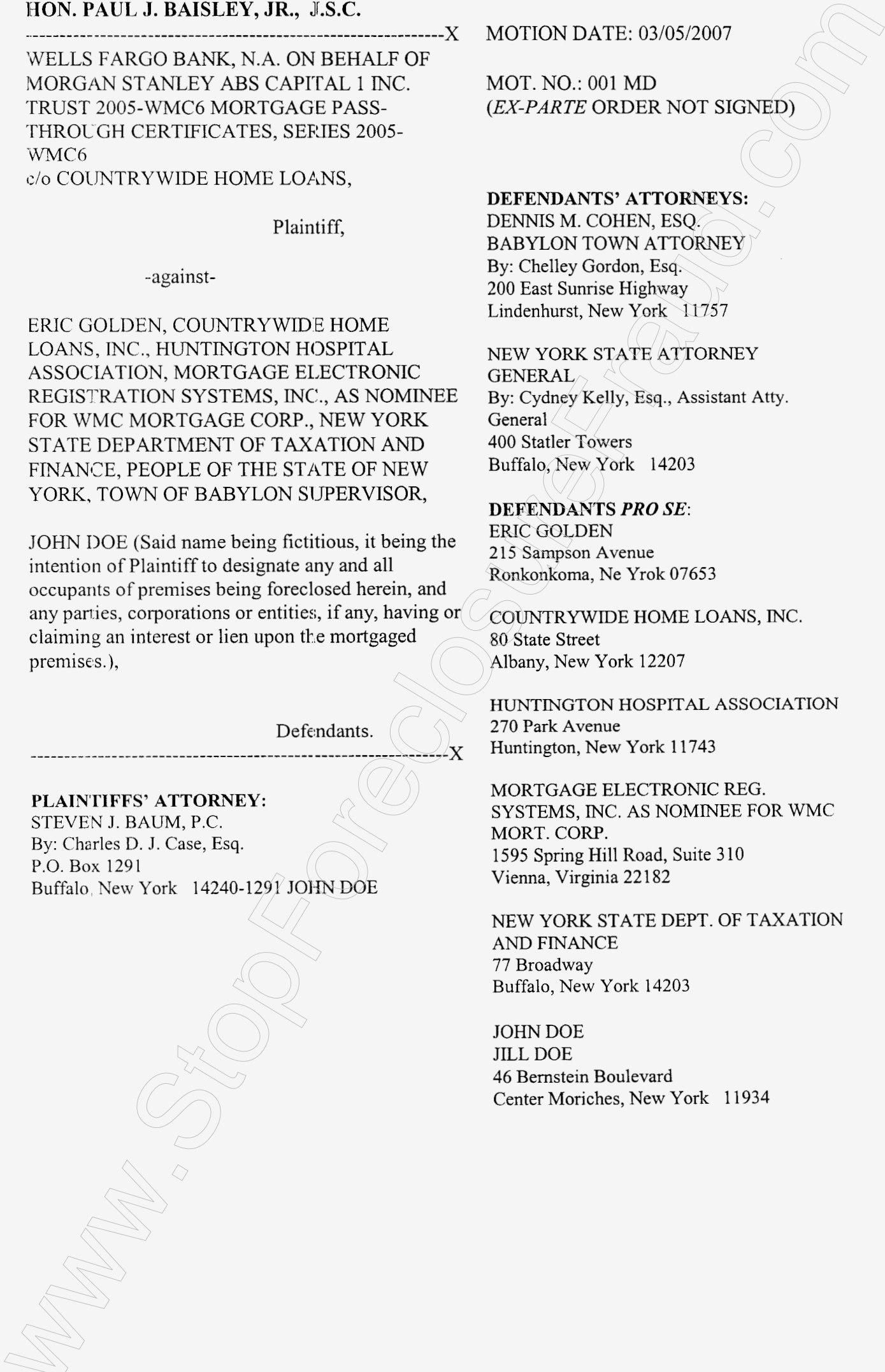
**PLAINTIFFS' ATTORNEY:**

STEVEN J. BAUM, P.C.  
By: Charles D. J. Case, Esq.  
P.O. Box 1291  
Buffalo, New York 14240-1291 JOHN DOE

MORTGAGE ELECTRONIC REG.  
SYSTEMS, INC. AS NOMINEE FOR WMC  
MORT. CORP.  
1595 Spring Hill Road, Suite 310  
Vienna, Virginia 22182

NEW YORK STATE DEPT. OF TAXATION  
AND FINANCE  
77 Broadway  
Buffalo, New York 14203

JOHN DOE  
JILL DOE  
46 Bernstein Boulevard  
Center Moriches, New York 11934



Upon the following papers numbered 1 to 5 read on this ex parte application for order of reference: Affirmation 1 to 5 and supporting papers; it is;

**ORDERED** that the motion (motion sequence no. 001) of plaintiff WELLS FARGO BANK, N.A., ON BEHALF OF MORGAN STANLEY ABS CAPITAL 1 INC. TRUST 2005-WMC6 MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-WMC6 (“WELLS FARGO”) for an order, in effect, fixing the default of the defendants, adding JILL CROCE and STEVEN CROCE as party defendants in place of “John Doe” and amending the caption accordingly, and appointing a referee to ascertain the amount due plaintiff and determine whether the mortgaged premises can be sold in parcels, is denied.

The submissions reflect that the mortgage that is the subject of this foreclosure action was executed by defendant ERIC GOLDEN as mortgagor and WMC Mortgage Corp. (“WMC”) as mortgagee on April 11, 2005. The submissions further reflect that on October 10, 2006, after the commencement of this action on October 3, 2006, Mortgage Electronic Registration Systems, Inc. (“MERS”), acting as “nominee” for WMC, purported to assign the mortgage, “together with the bond or obligation described in said mortgage,” to plaintiff WELLS FARGO. MERS, which is not itself the owner of the note and mortgage, does not have 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). Moreover, it is well established that an action for foreclosure of a mortgage may not be brought by one who has no title to it. *Kluge v. Fugazy*, 145 A.D.2d 537, 536 N.Y.S.2d 92 (2d Dept. 1988). Plaintiff’s submissions establish that even if the purported assignment by MERS were valid, at the time of the commencement of this action plaintiff was not the owner of the mortgage and note sued upon. The interpolation of the statement that “This Assignment is effective as of: 9/01/06” is insufficient to imbue plaintiff with ownership of the note and mortgage retroactively to the time of commencement of the action, even if the purported assignment were otherwise effective.

In light of the foregoing, plaintiff has not established its entitlement to a default judgment and an order of reference and accordingly the motion is denied.

*Ex-parte* “order of reference in mortgage foreclosure” marked “not signed.”

Dated: May 30, 2007

  
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J.S.C.