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<b>JP Morgan Chase Natl. Bank v Fashakin</b>
2015 NY Slip Op 50154(U)
Decided on February 24, 2015
Supreme Court, Queens County
Livote, J.
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This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on February 24, 2015

Supreme Court, Queens County

<p style="text-align:center"><b>JP Morgan Chase National Bank, Plaintiff,</b></p> <p style="text-align:center"><b>against</b></p> <p style="text-align:center"><b>Janet Fashakin, Defendants.</b></p>
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Leonard Livote, J.

Plaintiff cross-moves for summary judgment in this mortgage foreclosure action.

Where, as here, a plaintiff's standing to commence a foreclosure action is placed in issue by the defendant, it is incumbent upon the plaintiff to prove its standing to be entitled to relief (*Citimortgage, Inc. v. Stosel*, 89 AD3d 887, 888 [Dept 2011]). A plaintiff in a mortgage foreclosure action has standing where it is the holder of both the subject mortgage and of the underlying note at the time the action is commenced (*MLCFC 2007-9 Mixed Astoria, LLC v. 36-02 35th Ave. Development, LLC*, 116 AD3d 745, 746 [2 Dept 2014]).

The plaintiff in this action, JP Morgan Chase Bank ("JP Morgan"), named itself as the creditor in

the complaint. In its motion for summary judgment, however, plaintiff attests that the Federal National Mortgage Association ("Fannie Mae") is the "beneficial" owner of the mortgage, and that JP Morgan is the [\*2]servicing agent.

A servicing agent may commence a foreclosure when it identifies the owner of the note and mortgage, the action is expressly maintained in the plaintiff's capacity as servicing agent, and the owner of the note and mortgage has delegated authority to act with respect to the note and mortgage ([CWCapital Asset Management, LLC v. Great Neck Towers, LLC, 99 AD3d 850, 851 \[2 Dept 2012\]](#); [CWCapital Asset Management LLC v. Charney-FPG 114 41st Street, LLC, 84 AD3d 506, 507 \[1st Dept 2011\]](#)).

In the instant case, plaintiff identified itself as the creditor, maintained the action in its own name and has failed to offer any evidence that the owner of the note and mortgage has delegated authority to commence and maintain this action. Thus, there is an issue of fact regarding standing and the cross-motion for summary judgment is denied.

Defendant moves to vacate the note of issue on the grounds that her request for production of documents has not been complied with. Plaintiff does not directly address this assertion in its opposition papers. Rather, plaintiff asserts that defendant has failed to show that the outstanding discovery would lead to the discovery of a material issue of fact that would defeat plaintiff's summary judgment motion. In view of the fact that plaintiff's summary judgment motion has been denied, this is not a viable argument. Accordingly, it is

Ordered, that the note of issue is stricken and plaintiff is directed to comply with the outstanding document request.

Submit Order/Judgment.

Dated: February 24, 2015

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Leonard Livote, A.J.S.C.

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