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May 6, 2009

Steven J. Baum, P.C.  
P.O. Box 1291  
Buffalo, New York 14240-1291

Tracy & Edwards, Esqs.  
317 Little Tor Road South  
New City, New York 10956

Re: HSBC Bank, etc. v. Miller, et al.  
Index No. 4786-2008  
RJI No. 52-28816-09

Dear Counsel:

Enclosed please find a copy of the Decision and Order, relative to the above matter.

The original papers are being forwarded to the Sullivan County Clerk's Office for filing. If you have questions concerning the filing of these papers, you are directed to contact the Clerk's Office.

Very truly yours,

MARK M. MEDDAUGH  
Acting Supreme Court Justice

MMM/edg  
Enc.  
cc: Sullivan County Clerk

RECEIVED



**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SULLIVAN**

-----X  
**HSBC BANK USA, NATIONAL ASSOCIATION,  
AS TRUSTEE FOR WFALT 2007-PA02  
3451 Hammond Avenue  
Waterloo, La 50704-5400,**

**Plaintiff**

**-against-**

**DECISION/ORDER**

**Index # 4786-2008  
RJI No. 52-28816-09**

**JEFFREY F. MILLER, BOARD OF MANAGERS,  
EMERALD GREEN PROPERTY OWNER'S  
ASSOCIATION, INC., JP MORGAN CHASE  
BANK, N.A.,**

**JOHN DOE, (said names 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,**

**Defendants.**

-----X  
**Present: Hon. Mark M. Meddaugh,  
Acting Justice, Supreme Court**

**Appearances: Steven J. Baum, P.C.  
Attorneys for Plaintiff  
P.O. Box 1291  
Buffalo, New York 14240-1291**

**Tracy & Edwards  
Attorneys for Defendant  
317 Little Tor Road South  
New City, New York 10956**

**MEDDAUGH, J.:**

The Defendant, Jeffrey F. Miller, by his attorney, Tracy & Edwards, filed a Notice of Motion with this court dated February 9, 2009, seeking to dismiss the pending complaint pursuant to CPLR §3211 (a)(1), and 3211(a)(7).

In support of the application, the Court received the Notice of Motion, an affirmation of John S. Edwards, Esq., dated February 11, 2009, together with his reply affirmation, dated April 1, 2009.

In opposition to the application, the Court received the affirmation of Megan B. Szeliga, Esq., dated March 6, 2009, along with her Memorandum of Law, also dated March 6, 2009.

The Plaintiff seeks to foreclose on a mortgage entered into between the Defendant, Jeffrey F. Miller and the Real Estate Mortgage Network, Inc., a New Jersey Corporation, which mortgage was dated March 9, 2007.

At the time of the execution of the mortgage, Mr. Miller also executed an "interest-only period fixed rate note" in the sum of \$525,000.00, with monthly payments commencing on May 1, 2007. The initial payments were \$3,007.81 per month for the first one-hundred and twenty (120) months, and thereafter the payments increased to \$4,031.02 per month until the note was paid on April 1, 2037.

The mortgage was assigned by an "Assignment of Mortgage," dated December 12, 2008, assigning the mortgage from the Mortgage Electronic Registration Systems, Inc., as nominee for Real Estate Mortgage Network, Inc., and its successor and assigns, to the HSBC Bank USA, National Association as Trustee for WFALT 2007-PA01.

The Defendant, Jeffrey F. Miller, seeks to dismiss the pending proceeding, in part due to the fact that he alleges that both the mortgage and note were not assigned to the Plaintiff, HSBC Bank, USA, et al., and because of that, they cannot foreclose on the mortgage.

The "Assignment of Mortgage," which is attached as exhibit E to the opposition papers, makes no reference to the note, and only makes reference to the mortgage being assigned. The



Assignment has a vague reference to note wherein it states that "the said assignor hereby grants and conveys unto the said assignee, the assignor's beneficial interest under the mortgage," but this is the only language in the Assignment which could possibly be found to refer to the note.

Contrary to the affirmation of Ms. Szeliga in which she represented, in paragraph 17, that there was language in the assignment which specifically referred to the note, the assignment in this case does not contain a specific reference to the Note.

In light of the foregoing, the Court is satisfied that there is insufficient proof to establish that both the note and the mortgage have been assigned to the Plaintiff, and therefore, it is hereby

**ORDERED** that the Plaintiff has no standing to maintain the foreclosure action; and it is further

**ORDERED** that the application of Defendant, Jeffrey F. Miller, to dismiss is granted, without prejudice, to renew upon proof of a valid assignment of the note.

This memorandum shall constitute the Decision and Order of this Court. The original Decision and Order, together with the motion papers have been forwarded to the Clerk's office for filing. The filing of this Order does not relieve counsel from the obligation to serve a copy of this order, together with notice of entry, pursuant to CPLR § 5513(a).

Dated: May 6, 2009  
Monticello, New York

**E N T E R**

  
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**HON. MARK M. MEDDAUGH**  
Acting Supreme Court Justice