Short Form Order

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

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

INDEX NO.: 24175/2005

MOTION DATE: 01/04/2007 ----X

MOT. NO.: 001 MD

EMC MORTGAGE CORPORATION,

Plaintiff,

-against-

LORI A. WINK-THILMAN, JOHN THILMAN, EMC MORTGAGE CORPORATION, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., JENNIFER ZENESKI,

Defendants.

PLAINTIFF'S ATTORNEY: STEVEN J. BAUM, P.C. By: Darleen V. Karaszewski, Esq. 220 Northpointe Parkway, Suite G Amherst, New York 14228

DEFENDANTS PROSE: 88 Dana Avenue Mastic, New York (11950

JENNIFER ZENESKI 88 Dana Avenue Mastic, New York 11950

Upon the following papers numbered 1 to 6 read on this motion for judgment of foreclosure and sale: Notice of Motion and Affirmation 1 to 6 and supporting papers; it is;

ORDERED that the motion (motion sequence no. 001) of plaintiff EMC MORTGAGE CORPORATION ("EMC") for an order granting judgment of foreclosure and sale is denied.

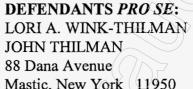
The submissions reflect that the mortgage that is the subject of this foreclosure action was executed by defendants LORI A. WINK-THILMAN and JOHN THILMAN as mortgagors and Alliance Mortgage Banking Corp. ("Alliance") as mortgagee on February 17, 2005. (The mortgage note was executed by LORI A. WINK-THELMAN only.) The submissions further reflect that on June 9, 2006, after the commencement of this action on October 12, 2005, Mortgage Electronic Registration Systems, Inc. ("MERS"), acting as "nominee" for Alliance, purported to assign the mortgage, "together with the indebtedness or obligation described in said instrument," to plaintiff EMC MORTGAGE CORPORATION. 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.

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

Dated: April 17, 2007	H

ON. PAUL J. BAISLEY, JR.

J.S.C.



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