

SUPREME COURT - STATE OF NEW YORK
I.A.S. TERM, PART XIV - SUFFOLK COUNTY

PRESENT:

Hon. WILLIAM L. UNDERWOOD, JR.

MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC. AS NOMINEE FOR COUNTRYWIDE
HOME LOANS, INC.,

Plaintiff(s),

-against-

VICTORIA B. SCHOENSTER; "JOHN DOES" and "JANE
DOES", said names being fictitious , parties intended being
possible tenants or occupants of premises, and corporations,
other entities or persons who claim, or may claim, a lien
against the premises,

Defendant(s).

ORIG. RETURN DATE:
FINAL RETURN DATE:
MTN. SEQ. #: MD/EXPARTE ORDER

PLTF'S/PET'S ATTORNEY:
ROSICKI,, ROSICKI & ASSOCIATES, P.C.
BY: AMY RAMEAU, ESQ.
One Old Country Road, Suite 200
Carle Place, New York 11514

DEFT'S/RESP ATTORNEY:

Upon the following papers numbered 1 to__ read on this motion _____
Notice of Motion/Order to Show Cause and supporting papers ____; Notice of Cross Motion and supporting papers ____;
Answering Affidavits and supporting papers ____; Replying Affidavits and supporting papers ____; Other ____; (and after
hearing counsel in support of and opposed to the motion) it is,


ORDERED that this *ex parte* application by the plaintiff for an order, *inter alia*, fixing
the defaults of the defendant mortgagors and other known defendants in answering the
summons and complaint served in this mortgage foreclosure action and for an order
appointing a referee to compute amounts due under the mortgage sought to be foreclosed
herein is considered under CPLR 3215 and Article 13 of the Real Property Actions and
Proceedings Law (RPAPL) and is denied.

The moving papers established that the plaintiff has no ownership interest in the
subject note and mortgage sought to be foreclosed herein by assignment or otherwise. Since

only the owner of the note and mortgage at the time of the commencement of the action has standing to prosecute claims for foreclosure of the mortgage (*Kluge v Fugazy*, 145 AD2d 537, 536 NYS2d 92 [1988]), the plaintiff here cannot establish the *prima facie* validity of the claims against the defendants as is required by CPLR 3215(f) (see, *Gagen v Kipany Productions, Ltd.*, 289 AD2d 844, 735 NYS2d 225 [2001], and the cases cited therein).

In view of the foregoing, the instant application is denied and the proposed order appointing a referee to compute has been marked "*Not signed*".

Dated: September 15, 2004


HON. WILLIAM L. UNDERWOOD, JR.
J.S.C.