

E

At Part 26 of the Supreme Court of the State of New York, Kings County on the 15th day of January, 2008

Present: HON. DONALD SCOTT KURTZ
Justice, Supreme Court

Index No.: 24713/07

INDYMAC BANK, FSB,

Plaintiff,

DECISION/ORDER

- against -

LYNETTE RODNEY-ROSS; LATOYA HORTON; NATIONAL CITY BANK; NEW YORK CITY ENVIRONMENTAL CONTROL BOARD; '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).

Recitation, as required by CPLR §2219(a), of the papers considered in the review of this motion:

<u>Papers</u>	<u>Numbered</u>
Order to Show Cause/Notice of Motion and Affidavits/Affirmations Annexed.....	1
Answering Affidavits/Affirmations.....	_____
Reply Affidavits/Affirmations.....	_____
Memoranda of Law.....	_____
Other.....	_____

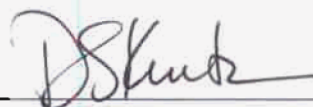
Upon the foregoing cited papers, the Decision/Order on this motion is as follows:

Indymac Bank, FSB (hereinafter "plaintiff") commenced the instant mortgage foreclosure action by filing of the summons and complaint on July 6, 2007. After service of said summons and complaint on all defendants and their failure to appear or answer, with the exception of defendant National City Bank, plaintiff made the instant application for a default judgment and order of reference. The original lender of the subject October 4, 2006 mortgage is Mortgage Electronic Registration Systems, Inc. as nominee for Mortgageit, Inc., (hereinafter "the original lender"). In support of plaintiff's application, it submits a purported assignment of the mortgage from the original lender to plaintiff. The purported assignment is dated July 11, 2007 and states in pertinent part that "[t]his assignment is effective on or before June 1, 2007." However, such an attempt to retroactively assign the mortgage is insufficient to establish plaintiff's ownership interest at the time the action was

commenced. See *Countrywide Home Loans, Inc. v. Taylor*, 17 Misc3d 595 (Sup. Ct. Suffolk Co. 2007). Plaintiff's attempt to foreclose upon a mortgage in which it had no "legal or equitable interest was without foundation in law or fact..." *Katz v. East-Ville Realty Co.*, 249 AD2d 243 (1st Dept 1998). See *U.S. Bank Nat. Ass'n v. Merino*, 16 Misc3d 209, 212 (Sup. Ct. Suffolk Co. 2007). Moreover, "foreclosure of a mortgage may not be brought by one who has no title to it..." *Kluge v. Fugazy*, 145 AD2d 537, 538 (2d Dept 1998). See *RCR Services Inc. v. Herbil Holding Co.*, 229 AD2d 379 (2d Dept 1996). Finally, plaintiff's standing to bring the within action goes to the basis of a court's authority to adjudicate a dispute. See *Stark v. Goldberg*, 297 AD2d 203 (1st Dept 2002) (wherein the court held that *sua sponte* dismissal of the action was warranted despite the lack of any assertion by defendants of an objection to plaintiffs' standing).

In view of the foregoing, the Court finds that plaintiff had no standing to commence this action. Plaintiff's application for a default judgment and order of reference is hereby denied and its complaint is hereby dismissed *sua sponte*.

The foregoing shall constitute the Decision and Order of the Court.



DONALD SCOTT KURTZ
Justice, Supreme Court