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At Part 26 of the Supreme Court of the State of New York, Kings County on the 3<sup>rd</sup> day of January, 2008

Present: HON. DONALD SCOTT KURTZ  
Justice, Supreme Court

Index No.: 28128/07

**LASALLE BANK NATIONAL ASSOCIATION,  
AS TRUSTEE FOR MERRILL LYNCH  
MORTGAGE INVESTORS TRUST MORTGAGE  
LOAN ASSET-BACKED CERTIFICATES,  
SERIES 2006-OPT1,**

**DECISION/ORDER**

*Plaintiff,*

*- against -*

**ANTHONY SMALLS A/K/A TONY SMALLS;  
FELICIA SMALLS; NEW YORK STATE  
DEPARTMENT OF TAXATION AND FINANCE;  
"JOHN DOE" and "JANE DOE" said names being  
fictitious, it being the intention of Plaintiff to  
designate any and all occupants of premises being  
foreclosed herein,**

*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>
to Show Cause/Notice of Motion and	
Affidavits/Affirmations Annexed.....	_____
Answering Affidavits/Affirmations.....	_____
Reply Affidavits/Affirmations.....	_____
Memoranda of Law.....	_____
Other.....	_____

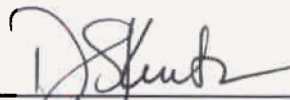
Upon the foregoing cited papers, the Decision/Order on this motion is as follows:

Lasalle Bank National Association, as Trustee for Merrill Lynch Mortgage Investors Trust Mortgage Loan Asset-Backed Certificates, Series 2006-OPT1 (hereinafter "plaintiff") commenced the instant mortgage foreclosure action by filing of the summons and complaint on July 31, 2007. After service of said summons and complaint on all defendants and their failure to appear or answer, plaintiff made the instant application for a default judgment and order of reference. The original lender of the subject June 24, 2006 mortgage is Option One Mortgage Corporation (hereinafter "Option One"). In support of plaintiff's application, it submits a purported assignment of the mortgage from Option One to plaintiff. The purported assignment is dated August 22, 2007 and states in pertinent part "[e]ffective as of June 25, 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 (1<sup>st</sup> 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.



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**DONALD SCOTT KURTZ**  
Justice, Supreme Court