

At an IAS Trial Term, Part 9 of the Supreme Court of the State of New York, held in and for the County of Kings, at Civil Center, Borough of Brooklyn, City and State of New York, on the 24th Day of May 2011.

P R E S E N T:

Hon. DEBRA SILBER
Justice Presiding

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

-----x
DLJ MORTGAGE CAPITAL, INC.,
Plaintiff,

-against-

_____, et al.,
Defendant(s).
-----x

Index No.:

SETTLE ORDER

Upon reading and filing the Affidavit of Defendant _____, sworn to on the 22nd day of December 2010, the Affidavit of Diane Rodriguez, sworn to on the 28th day of December 2010, the Supporting Affirmation of R. David Marquez, Esq., dated the 28th day of December 2010, and the exhibits annexed thereto; and DLJ MORTGAGE CAPITAL, INC., having appeared and filed opposition by its attorneys Stein, Farkas & Schwartz, LLP., before the undersigned Justice, and upon reading and filing the Affirmation in Opposition of Jeffrey M. Schwartz, Esq., dated February 10, 2011, and the exhibits annexed thereto; and upon reading and filing the Reply Affirmation of R. David Marquez, Esq., dated March 9, 2011, and the exhibits annexed thereto; and after hearing R. David Marquez, Esq., of the firm R.

David Marquez, P.C., Defendant's attorney in this action in support of the Order to Show Cause, and after hearing Esther E. Schwartz, Esq., of the firm Stein, Farkas & Schwartz, LLP., Plaintiff's attorney in this action in opposition thereto, and the Court having had due deliberation thereon and sufficient reason appearing therefore;

NOW, upon Order to Show Cause of R. David Marquez, P.C. by R. David Marquez, Esq., attorney for defendant, it is

ORDERED, ADJUDGED AND DECREED, that the Order to Show Cause seeking vacatur of the judgment of foreclosure and sale dated June 20, 2010, and relief which includes dismissal of the above captioned action for lack of jurisdiction pursuant to CPLR section 3211(a)(8) and section 5051(a)(3)(4) is granted based upon ~~the Plaintiff's lack of standing to sue when the within action was commenced;~~ *numerous defects in the papers as enumerated in the motion, in particular the assignment to DLJ,* and for lack of personal jurisdiction over the defendant, based upon defective service of process due to Plaintiff's mailings made to an address with the wrong zip code, the within action is dismissed, with prejudice against FIRST UNITED MORTGAGE BANKING CORP.,* and it is further

ORDERED, ADJUDGED AND DECREED, that the Notice of Pendency dated and filed on September 14, 2007, is hereby vacated forthwith, and it is further

ORDERED, that a copy of this ~~same~~ *all other parties and* Order be served upon the attorneys for the Plaintiff and upon Referee Bart M. Verdirame, Esq., with Notice of Entry.

Dated: Brooklyn, New York
May 24, 2011

ENTER:

ds

J.S.C.

Hon. Debra Silber
Justice Supreme Court

**only, and only as to the first mortgage on the property which is the subject of this foreclosure, and not the second mortgage,*