

OS ORIGINAL

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable VALERIE BRATHWAITE NELSON IA TERM, PART 7  
Justice

-----X  
U.S. BANK NATIONAL ASSOCIATION AS  
TRUSTEE FOR CSAB MORTGAGE-BACKED PASS-  
THROUGH CERTIFICATES, SERIES 2006-2  
3476 Stateview Boulevard  
Fort Mill, SC 29715

Index No. ....  
Motion: 9/13/11  
Motion Seq. No.: 2  
Cal. No.: 56

Plaintiff(s),

-- against --

, et al.,

Defendant(s).

-----X  
The following papers numbered 1 to 14 read on this motion by the  
defendants for an order  
dismissing this action pursuant to CPLR 3211 (a) (3) on the grounds  
that plaintiff lacked standing when this action was commenced.

Notice of Motion-Affidavits-Exhibits.....	1	-	11
Answering Affidavits - Exhibits.....	9	-	11
Reply Affirmations.....	12	-	14

PAPERS  
NUMBERED  
NOV 23 4 03 23  
FILED  
QUEENS COUNTY CLERK

Upon the foregoing papers it is ordered that the motion  
granted for the following reasons:

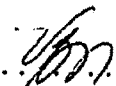
On June 10, 2006, defendants  
executed a mortgage on real property in favor of Real  
Estate Mortgage Network, Inc. to secure their indebtedness in the  
amount of \$585,000.00 pursuant to a promissory note of that same  
date. The mortgage states that Mortgage Electronic Registration  
Systems, Inc. ("MERS") is acting solely as nominee for Real Estate  
Mortgage Network, Inc., its successors and assigns and that for the  
purposes of recording said mortgage MERS is the mortgagee of  
record. By assignment dated October 3, 2008, MERS transferred its  
interest in the mortgage to the plaintiff. Thereafter, on October  
7, 2008, plaintiff commenced this foreclosure action.

Defendants move to dismiss the complaint on the grounds that plaintiff lacked standing when it commenced the action herein. "In a mortgage foreclosure action, a plaintiff has standing where it is both the holder or assignee of the subject mortgage and the holder or assignee of the underlying note at the time the action is commenced." (U.S. Bank, N.A. v Collymore, 68 AD3d 752 [2009] citing Mortgage Elec. Registration Sys. v Coakley, 41 AD3d 674 [2007]; Federal Natl. Mtge. Assn. v Youkelsone, 303 AD2d 546, 546[2003]; First Trust Natl. Assn v Meisels, 234 AD2d 4141 [1996].). Defendants submit that the documentary evidence establishes that plaintiff did not own the subject note and/or mortgage at the time of commencement.

Plaintiff opposes the motion and argues that it is owned both the note and mortgage as of the date of commencement. "Either a written assignment of the underlying note or the physical delivery of the note prior to commencement of a foreclosure action is sufficient to transfer the obligation, and the mortgage passes with the debt as an inseparable incident" (Bank of New York v Silverberg, 2011 NY Slip Op 5002 citing U.S. Bank N.A. v Madero, 80 AD3d at 753, quoting U.S. Bank, N.A. v Collymore, supra 754). Plaintiff submits that the assignment of a mortgage dated October 3, 2008 is sufficient to demonstrate delivery of the note prior to commencement. However, this argument is flawed for several reasons. For one, the assignment cannot establish plaintiff's interest in the note inasmuch as the mortgage only provided MERS with the authority to assign the mortgage and did not provide for the assignment of the note (Bank of New York v Silverberg, supra). Secondly, in the absence of an assignment of mortgage there must be a showing that the note was physically delivered to the plaintiff prior to commencement (id.). In the case at bar, however, the documentary evidence does not sufficiently demonstrate delivery of the note prior to commencement inasmuch as the note as submitted herein is neither indorsed in blank nor indorsed to the plaintiff (cf. Mortgage Elec. Registration Sys., Inc. v Coakley, 41 AD3d 674 [2007]). There being no evidence of the plaintiff's interest in the note at the time of commencement, the motion is granted and the complaint is dismissed in its entirety pursuant to CPLR 3211 (3).

FILED  
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Dated: 1/17/11

  
 VALERIE BRATHWAITE NELSON, J.S.C.