

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 10(e)

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Wells Fargo Bank, National Association as Trustee
for Securitized Asset Backed Receivables LLC
2005-FR4 Mortgage Pass Through Certificates,
Series 2005-FR4.

Plaintiff,

DECISION and ORDER
Index No 35292/2015E

-against-

Wakelyn Phillips a/k/a Wakelyn W. Phillips;
Ann Gaynor a/k/a Ann Marie Gaynor a/k/a
Ann Marie Philips; Household Finance Realty
Corporation of New York; City of New York
Environmental Control Board; City of New York
Violations Bureau; City of New York Transit
Adjudication Bureau and "JOHN DOE", said name
being fictitious, it being the intention of Plaintiff to
designate any and all occupants of premises being
foreclosed herein, and any parties, corporations or
entities, if any, having or claiming an interest or lien
upon the mortgaged premises,

Defendants.

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Recitation pursuant to CPLR § 2219(a) of the papers considered in reviewing the underlying
motion for summary judgment and order of reference:

Notice of Motion and annexed Exhibits and Affidavits.....1

On 3/25/05, defendants Phillips and Gaynor executed a a \$427,500.00 mortgage and note to
repay Fremont Investment & Loan, plaintiff's predecessor, for property located at 3311 Wickham
Avenue, Bronx, New York 10469. Plaintiff Wells Fargo Bank ("Wells Fargo") moves for summary
judgment in its favor; a judgment against all defaulting parties; to appoint a referee to compute; and
to amend the caption.

When a foreclosure action is commenced, the movant must be the assignee or holder of both
the mortgage and the note. (*OneWest Bank FSB v Carey*, 104 AD3d 444 [1st Dept 2013]; *Bank of
New York Mellon Trust Co. NA v Sachar*, 95 AD3d 695 [1st Dept 2012]; see generally, *Deutsche
Bank National Trust Co.*, 132 AD3d 430 [1st Dept 2015].)

Here, plaintiff claims that it has standing because it possesses both the mortgage and the note.

The plaintiff, however, is a holder of the note only if the note was properly negotiated. UCC § 3-202(1) provides that “[n]egotiation is the transfer of an instrument in such form that the transferee becomes a holder. If the instrument is payable to order it is negotiated by delivery with any necessary endorsement...” UCC § 3-202(2) provides that “[a]n indorsement must be written by or on behalf of the holder and on the instrument or on a paper so firmly affixed thereto as to become a part thereof.” While there is an undated blank endorsement from Fremont Investment & Loan, it is not placed on the note itself. Instead, it appears on a blank separate sheet of paper. There is no explanation as to why the endorsement was not placed on the note and no claim that the separate sheet was actually affixed to the note so as to become part of it. (*Deutsche Bank National Trust Co., v. Hossain*, 2013 NY Slip Op 30096[U] [Sup Ct, Suffolk County 2013].)

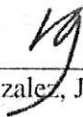
In addition, the conclusory affidavit of Jerrell Menyweather, a document execution specialist employed by Nationstar Mortgage LLC, the loan servicer, provides insufficient information for the court to conclude, as a matter of law, that Wells Fargo Bank held the note at the time the action was commenced. In fact, Mr. Menyweather’s attestation that Nationstar possesses the note is based on his review of computerized records comprised of information entered by other employees; he possesses no personal knowledge. Accordingly, plaintiff bank fails to establish that it held the note at the time the action was commenced. (*U.S. Bank, N.A. v. Faraque*, 120 AD3d 575 [2nd Dept. 2014]; *MLCFC 2007-9 Mixed Astoria, LLC v. 36-02 35th Avenue Development, LLC*, 116 AD3d 745 [2nd Dept. 2015]).

Based on the foregoing, the plaintiff’s motion is denied in its entirety.

Service of a copy of this Decision and Order with Notice of Entry shall be served within 30 days.

Dated: April 28, 2016

So ordered,



Lizbeth Gonzalez, JSC