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Type of Instrument: ORDER CANCELLING LIS
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Index Number: 07 25351 Sequence Number: 43
Plaintiff(s):

COUNTRYWIDE HOME LOANS, INC.

Defendant(s):

LEVINSON, HAROLD; A/K/A LEVINSON, RICHARD; ETAL

Attorney(s):

TAX MAP NO:

Liber Page(s):

THIS PAGE IS A PART OF THE INSTRUMENT
THIS IS NOT A BILL

Judith A. Pascale
County Clerk, Suffolk County

SHORT FORM ORDER

SUPREME COURT: STATE OF NEW YORK
I.A.S. PART XXI: SUFFOLK COUNTY

PRESENT:

HON. JEFFREY ARLEN SPINNER
Justice of the Supreme Court

Index No. 2007-25351

PUBLISH

COUNTRYWIDE HOME LOANS
INC.,

Met. Seq. 004-MD CASEDISP
Met. Seq. 005-XMG CASEDISP

Plaintiff

-vs.-

ORDER ON MOTION AND
CROSS-MOTION FOR
FOR SUMMARY JUDGMENT

HAROLD LEVINSON a/k/a RICHARD
LEVINSON, JANINE LEVINSON,
BERKOSKI ENTERPRISES, MORTGAGE
ELECTRONIC REGISTRATION
SYSTEMS INC. AS NOMINEE FOR
COUNTRYWIDE BANK N.A.,
PEOPLE OF THE STATE OF NEW
YORK, et. al.

Defendants

The Plaintiff has commenced this action claiming foreclosure of a mortgage in the amount of \$ 1,235,000.00 dated July 28, 2006, given to secure an Adjustable Rate Note of the same date, which was recorded with the Clerk of Suffolk County in Liber 21406 of Mortgages at Page 536. The mortgage constitutes a first lien encumbering the real property known as 14 Turnberry Court, Dix Hills, Town of Huntington, New York. According to Plaintiff, Defendant HAROLD LEVINSON defaulted upon his obligation by failing and omitting to remit the installment which became due and owing on January 1, 2007.

The parties engaged in protracted motion practice herein including Plaintiff's motion for a judgment of foreclosure and sale pursuant to RPAPL § 1351 [seq. 002] together with Defendant's cross-motion for leave to serve and file an Amended Verified Answer pursuant to CPLR § 5015(a)(1) [seq. 003]. By way of Order dated March 20, 2014, the Court denied Plaintiff's application and granted the motion of Defendant.

Plaintiff now moves, under CPLR § 3212 and RPAPL § 1321 for summary judgment and for the appointment of a Referee [seq. 004] while Defendant cross-moves for dismissal [seq. 005]. For the reasons hereinafter set forth, Plaintiff's motion is denied and Defendant's cross-motion is granted.

The Court takes judicial notice of all prior pleadings and proceedings that are contained within its official file. The Court's prior determination of March 20, 2014 is critical to the present disposition. Plaintiff's motion [seq. 002] was denied in light of Defendant's exposition, in his cross-motion, of certain factual issues which led the Court to seriously question Plaintiff's standing herein.

It is settled law that in order to invoke the mechanism of the court system, a party must have a real interest in the controversy, New York State Assn. Of Nurse Anesthetists v. Novello 2 NY 3d 207 (2004), that is, he or she must be aggrieved. The failure to demonstrate standing to sue necessarily must result in dismissal since one without standing (that is, without an interest in the matter) cannot be part of a controversy and hence, dismissal is proper since the courts can only adjudicate controversies, Matter of New York State Inspection Sec. & Law Enforcement Empls. v. Cuomo 64 NY 2d 233 (1984).

Defendant has challenged Plaintiff's standing to proceed herein and the challenge has not been successfully rebutted by Plaintiff. Indeed, Plaintiff has come forward with two copies of the Adjustable Rate Note dated July 28, 2006, each one being facially distinguishable from the other in areas of substance (one contains an Allonge while the other contains endorsements). Moreover, Plaintiff actually concedes that its MERS Assignment is legally insufficient to demonstrate its standing but instead asserts that a copy of the Adjustable Rate Note was annexed to the Complaint, thereby vitiating the need for the Assignment. In point of fact, no copy of any kind was appended to the Complaint. Moreover, Plaintiff attempts to belatedly buttress its claim of standing by submitting various documents (i.e.; a prior "boilerplate" Affidavit which refers to the instrument of indebtedness only in the most vague of terms) with its Reply and not with its moving papers, in effect demonstrating its failure to prove its case *prima facie*.

Where, as here, a Defendant raises the issue of Plaintiff's standing to sue, then the burden is upon the Plaintiff to demonstrate that it enjoyed ownership of both the mortgage and the underlying obligation at the time of the commencement of the foreclosure action, Wells Fargo Bank N.A. v. Marchione 69 AD 2d 204 (2nd Dept. 2009). If Plaintiff is unable to prove its standing to sue, then dismissal of the action is appropriate, Bank Of New York v. Silverberg 86 AD 2d 274 (2nd Dept. 2011).

In the matter that is sub judice, Plaintiff has failed to prove, by a fair preponderance of the credible, relevant and material evidence, that it was vested with standing to seek enforcement of the obligation at the time of the commencement of this action. Therefore, upon the application of Defendant, it is incumbent upon the Court to enter a judgment of dismissal herein.

Accordingly, it is

ORDERED that the application of the Plaintiff [seq. 004] for summary judgment pursuant to CPLR § 3212 and for an Order of Reference pursuant to RPAPL § 1321 is hereby denied in its entirety; and it is further

ORDERED that the cross-motion by Defendant HAROLD LEVINSON [seq. 005] for an Order of dismissal for a lack of standing is hereby granted in its entirety; and it is further

ORDERED that this action shall be and is hereby dismissed; and it is further

ORDERED that the Clerk of Suffolk County, upon payment of the proper fees, if any, shall vacate, set aside and discharge any and all Notices of pendency that have been filed under this index number; and it is further

ORDERED that any relief not expressly granted herein shall be and the same is hereby denied.

Dated: May 23, 2016
Central Islip, New York

HON. JEFFREY ARLEN SPINNER
J.S.C.

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