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Court Rules Holder of Note, an Assignee of MERS, had Standing to Commence Foreclosure Action

August 10, 2011

Deutsche Bank Nat. Trust Co. v. Pietranico, 2011 NY Slip Op 21261 (July 27, 2011)

After extensive analysis of New York's precedent for mortgages, notes, assignments, and the Mortgage Electronic Registration Systems ("MERS") system, Suffolk County Supreme Court Justice Thomas A. Whelan denied a defendant's motion/order to show cause in its entirety. If granted, the motion would have stayed all proceedings in the foreclosure matter.

The case, *Deutsche Bank Nat. Trust Co. v. Pietranico,* decided on July 27, 2011, surrounds the familiar facts of many residential home purchases. On November 16, 2006, the defendant executed an adjustable rate note to American Brokers Conduit ("ABC") and a mortgage to secure payment to MERS, as nominee for ABC. On June 1, 2009, the defendant stopped paying the mortgage. As per the rights granted to lenders in the contract if there is a default, on January 25, 2010, MERS assigned the mortgage to the Plaintiff, Deutsche Bank. Soon after assigning the mortgage, the plaintiff filed a complaint to foreclose on the house. After the defendant defaulted on answering the complaint and failed to appear for the scheduled in-court foreclosure conference, the Court noted the defaults and granted the Plaintiff's application to appoint a referee to compute the sum due to the plaintiff. Over a year later, the defendant made this motion to stay all the foreclosure proceedings.

When addressing if MERS had the right to assign the mortgage to the Plaintiff, the Court wrote:

> *There is sufficient evidence to demonstrate that MERS had the authority from the lender to assign the mortgage. The Court finds upon the proofs provided by plaintiff and defendant and upon the mortgage documents and the terms, as explained, of the membership agreements with MERS and the original lender and its successors in interest, that when a lender that holds the note secured by the mortgaged premises, then assigns that note to another member of the MERS system, it need not additionally assign the mortgage because MERS, when it holds legal title to the mortgage lien, stands as common agent for any member who holds the note. As a matter of contract, under the MERS operating agreement, MERS becomes the agent for the new principal, the next purchasing member, each time there is a transfer.*

Moreover, because the note and mortgage were executed on the same day, as one transaction, the Court found that it was the intention of the parties for the two documents to remain united. Furthermore, the contract expressly granted MERS the right to act on behalf of the lender. Thus, MERS, as nominee for the lender, had the

right to assign the mortgage to the plaintiff due to its status as holder of the legal title, which ultimately provided Deutsche Bank with standing to commence the action against the defendant.

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