

Present: HON. DONALD SCOTT KURTZ
Justice, Supreme Court

Index No.: 31645/06

DEUTSCHE BANK NATIONAL TRUST COMPANY, as Trustee for the Certificateholders of Soundview Home Loan Trust 2005-OPT3, Asset-Backed Certificates, Series 2005-OPT3,

DECISION/ORDER

Plaintiff,

- against -

BENJAMIN CRUZ, CITY OF NEW YORK ENVIRONMENTAL CONTROL BOARD, CITY OF NEW YORK DEPARTMENT OF TRANSPORTATION PARKING VIOLATIONS BUREAU, CRIMINAL COURT OF THE CITY OF NEW YORK,

Defendants.

Recitation, as required by CPLR §2219(a), of the papers considered in the review of this motion:

<u>Papers</u>	<u>Numbered</u>
Order to Show Cause/Notice of Motion and Affidavits/Affirmations Annexed.....	<u>1</u>
Answering Affidavits/Affirmations.....	_____
Reply Affidavits/Affirmations.....	_____
Memoranda of Law.....	_____
Other.....	_____

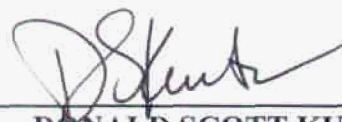
Upon the foregoing cited papers, the Decision/Order on this motion is as follows:

Deutsche Bank National Trust Company, as Trustee for the Certificateholders of Soundview Home Loan Trust 2005-OPT3, Asset-Backed Certificates, Series 2005-OPT3, (hereinafter “plaintiff”) commenced the instant mortgage foreclosure action by filing of the summons and complaint on October 18, 2006. After service of said summons and complaint on all defendants and their failure to appear or answer, plaintiff made the instant application for a judgment of foreclosure and sale. The original lender of the subject August 17, 2005 mortgage is Option One Mortgage Corporation (hereinafter “the original lender”). In support of plaintiff’s application, it submits a purported assignment of the mortgage from the original lender to plaintiff. The purported assignment is dated October 27, 2006. However, such an attempt to retroactively assign the mortgage is insufficient to establish plaintiff’s ownership interest at the time the action was commenced. See *Countrywide Home Loans, Inc. v. Taylor*, 17 Misc3d 595 (Sup. Ct. Suffolk Co. 2007). Plaintiff’s attempt to foreclose upon

a mortgage in which it had no “legal or equitable interest was without foundation in law or fact...” *Katz v. East-Ville Realty Co.*, 249 AD2d 243 (1st Dept 1998). *See U.S. Bank Nat. Ass'n v. Merino*, 16 Misc3d 209, 212 (Sup. Ct. Suffolk Co. 2007). Moreover, “foreclosure of a mortgage may not be brought by one who has no title to it...” *Kluge v. Fugazy*, 145 AD2d 537, 538 (2d Dept 1998). *See RCR Services Inc. v. Herbil Holding Co.*, 229 AD2d 379 (2d Dept 1996). Finally, plaintiff’s standing to bring the within action goes to the basis of a court’s authority to adjudicate a dispute. *See Stark v. Goldberg*, 297 AD2d 203 (1st Dept 2002) (wherein the court held that *sua sponte* dismissal of the action was warranted despite the lack of any assertion by defendants of an objection to plaintiffs’ standing).

In view of the foregoing, the Court finds that plaintiff had no standing to commence this action. Plaintiff’s application for a judgment of foreclosure and sale is hereby denied and its complaint is hereby dismissed *sua sponte*.

The foregoing shall constitute the Decision and Order of the Court.



DONALD SCOTT KURTZ
Justice, Supreme Court