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At Part 26 of the Supreme Court of the State of New York, Kings County on the 14th day of December, 2007

Present: HON. DONALD SCOTT KURTZ
Justice, Supreme Court

Index No.: 22434/07

**BANK OF NEW YORK AS TRUSTEE FOR THE
CERTIFICATE HOLDERS CWABS, INC,
ASSET-BACKED CERTIFICATES, SERIES
2004-6 C/O Countrywide Home Loans, Inc.
400 Countrywide Way
Simi Valley, CA 93065,**

DECISION/ORDER

Plaintiff,

-against-

**ESERDAI SINGH, NEW YORK CITY
ENVIRONMENTAL CONTROL BOARD, NEW
YORK CITY TRANSIT ADJUDICATION
BUREAU, JOHN DOE (said name being fictitious
it being the intention of plaintiff to designate any
and all occupants of premises being foreclosed
herein, and all parties , and corporations or other
entities, if any, having or claiming an interest or
lien upon the mortgaged premises.)**

Defendant(s).

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.....	_____

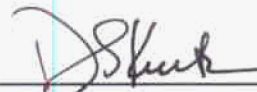
Upon the foregoing cited papers, the Decision/Order on this motion is as follows:

Bank of New York as Trustee for the Certificate Holders CWABS, Inc, Asset-backed Certificates, Series 2004-6 (hereinafter "plaintiff") commenced the instant mortgage foreclosure action by filing of the summons and complaint on June 20, 2007. After service of said summons and complaint on all defendants and their failure to appear or answer, plaintiff made the instant application

for a default judgment and order of reference. The original lender of the subject June 7, 2004 mortgage is America's Wholesale Lender (hereinafter "America's Wholesale"). In support of plaintiff's application, it submits a purported assignment of the mortgage from Mortgage Electronic Registration Systems, Inc., acting as nominee for America's Wholesale, to plaintiff. The purported assignment is dated June 28, 2007 and states in pertinent part that "this assignment is effective as of the 31st day of May, 2007." 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 default judgment and order of reference 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