

Present: HON. DONALD SCOTT KURTZ
Justice, Supreme Court

At Part 26 of the Supreme Court of the State of
New York, Kings County on the 29th day of
January, 2008

DEUTSCHE BANK NATIONAL TRUST
COMPANY, AS TRUSTEE FOR LONG BEACH
MORTGAGE LOAN TRUST 2005-WL1,

Index No.: 33315/07

Plaintiff,

DECISION/ORDER

- against -

LLOYD RYAN; RICARDO FRANCIS; DENISE
ORR; HOME HEATING OIL CORP.; NEW
YORK STATE DEPARTMENT OF TAXATION
AND FINANCE; NEW YORK CITY
ENVIRONMENTAL CONTROL BOARD;
YELLOWBOOK CO., INC; PEOPLE OF THE
STATE OF NEW YORK; CRIMINAL COURT
OF THE CITY OF NEW YORK; NATIONAL
STAR FUNDING, LLC; ROCHELLE EVANS;
CAPITAL ONE BANK; NEW YORK CITY
PARKING VIOLATIONS BUREAU; "JOHN
DOE" AND "JANE DOE" said names being
fictitious, it being the intention of Plaintiff to
designate any and all occupants of premises being
foreclosed herein,

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.....	<u> </u>
Reply Affidavits/Affirmations.....	<u> </u>
Memoranda of Law.....	<u> </u>
Other.....	<u> </u>

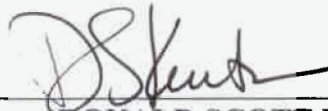
Upon the foregoing cited papers, the Decision/Order on this motion is as follows:

Deutsche Bank National Trust Company, as trustee for Long Beach Mortgage Loan Trust 2005-WL1, (hereinafter "plaintiff") commenced the instant mortgage foreclosure action by filing of the summons and complaint on August 31, 2007. After service of said summons and complaint on all

defendants and their failure to appear or answer, with the exception of defendant Capital One Bank, plaintiff made the instant application for a default judgment and order of reference. The original lender of the subject March 11, 2005 mortgage is Washington Mutual Bank (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 September 21, 2007 and states in pertinent part “[e]ffective as of July 30, 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