

(E)

At Part 26 of the Supreme Court of the State of New York, Kings County on the 15th day of January, 2008

Present: HON. DONALD SCOTT KURTZ
Justice, Supreme Court

Index No.: 36690/07

PHH MORTGAGE CORP.,

Plaintiff,

- against -

DECISION/ORDER

**RONALDO BARBER; MARITZA BARBER, AND
“JOHN DOE #1” through “JOHN DOE #10” the
last ten names being fictitious and unknown to the
Plaintiff, the person or parties intended being the
person or parties, if any having or claiming an
interest in or lien upon the mortgaged premises
described in the complaint,**

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.....	1
Answering Affidavits/Affirmations.....	_____
Reply Affidavits/Affirmations.....	_____
Memoranda of Law.....	_____
Other.....	_____

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

PHH Mortgage Corp., (hereinafter “plaintiff”) commenced the instant mortgage foreclosure action by filing of the summons and complaint on October 2, 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 September 1, 2006 mortgage is Mortgage Electronic Registration Systems, Inc., as nominee for Fleet National 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 October 4, 2007. However, 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