

**DECISION AND ORDER**

PUTNAM COUNTY

2011 DEC -1 PM 4:32

To commence the statutory period for appeals as of right under CPLR 5515[a], you are advised to serve a copy of this order, with notice of entry, upon all parties.

**SUPREME COURT OF THE STATE OF NEW YORK  
IAS PART, PUTNAM COUNTY**

Present: Hon. Francis A. Nicolai  
Justice of the Supreme Court

-----X  
DEUTSCHE BANK NATIONAL TRUST  
COMPANY, AS TRUSTEE FOR THE HJS ASSET  
LOAN OBLIGATION TRUST 2007-1,

Plaintiff,

-against-

INDEX NO. 3407/2010  
MOTION DATE: 8/29/11  
Seq. Nos. 1 & 2

KEVIN VAUGHN, COLLEEN VAUGHN,  
MORTGAGE ELECTRONIC REGISTRATION  
SYSTEMS, INC. AS NOMINEE FOR HSBC  
MORTGAGE CORPORATION (USA) and "JOHN  
DOE #1" to "JOHN DOE #10," the last ten names  
being fictitious and unknown to plaintiff, the  
persons 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 verified  
complaint,

Defendants.

-----X  
The following documents, numbered 1 to 17, were read on Defendant's motion to dismiss the complaint for lack of standing; and on Plaintiff's cross-motion to for an order granting a discontinuance of the action with prejudice pursuant to CPLR §3217(b):

<u>Papers:</u>	<u>Numbered</u>
Notice of Motion/Affirmation/Memorandum	1-3
Notice of Cross Motion/Affirmation in Support/ Exhs. A-E	4-10

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IAS PART, PUTNAM COUNTY**

Present: Hon. Francis A. Nicolai  
Justice of the Supreme Court

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DEUTSCHE BANK NATIONAL TRUST  
COMPANY, AS TRUSTEE FOR THE HIS ASSET  
LOAN OBLIGATION TRUST 2007-1,

Plaintiff,

-against-

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MOTION DATE: 8/29/11  
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SYSTEMS, INC. AS NOMINEE FOR HSBC  
MORTGAGE CORPORATION (USA) and "JOHN  
DOE #1" to "JOHN DOE #10," the last ten names  
being fictitious and unknown to plaintiff, the  
persons 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 verified  
complaint,

Defendants.

-----X

The following documents, numbered 1 to 17, were read on Defendant's motion to dismiss the complaint for lack of standing; and on Plaintiff's cross-motion to for an order granting a discontinuance of the action with prejudice pursuant to CPLR §3217(b):

<u>Papers:</u>	<u>Numbered</u>
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Affirmation in Opposition to Defendant's Motion to Dismiss/Exhs. A-E	11-16
Affirmation in Reply	17

Defendants seek an Order dismissing the subject action on the ground that Plaintiff lacked standing. This argument is predicated on the allegation that the assignment upon which Plaintiff relies was executed by MERS, as nominee for HSBC Mortgage Corporation. On the present submissions, this Court is unable to determine whether MERS was ever the actual holder of the underlying note, and thus cannot grant Defendant's motion in the absence of a hearing.

However, Plaintiff cross-moves for an Order granting a voluntary dismissal of the action, without prejudice pursuant to CPLR §3217(b). That section provides that an action may be discontinued by court order, "upon terms and conditions as the court deems proper." Subdivision (c) of that statute further provides that the discontinuance is without prejudice, unless otherwise ordered by the Court.

Based upon a review of the parties' submissions and the file in this matter, the Court finds that Plaintiff has supplied a reasonable explanation for seeking to withdraw its complaint in that it seeks the opportunity "to review and consider the applicability of the underlying loan documents" (Golab Affirmation, ¶14). The matter is in the early stages, and the Court does not find that Defendants would be substantially prejudiced by withdrawal of the action.

However, the Court finds that the discontinuance should be conditioned upon certain terms and conditions. Since Plaintiff seeks to discontinue the action to conduct a review of documents that it should have reviewed prior to commencement of this action, Defendants would be prejudiced if the action were revived and they were charged with the accrual of interest during the interim period while that review occurs. Additionally, Defendants should be

reimbursed their attorneys' fees and costs and disbursements in connection with their motion to dismiss, which prompted Plaintiff's instant cross-motion for voluntary discontinuance.

Accordingly, based upon the foregoing, it is hereby

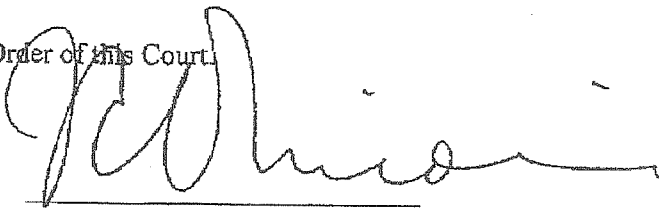
ORDERED that Defendant's motion to dismiss the action for lack of standing is denied; and it is further

ORDERED that Plaintiff's motion for voluntary discontinuance of the action is granted, without prejudice, and this action is hereby discontinued, upon the conditions that (1) interest is tolled on the underlying mortgage obligation from August 29, 2011 (the date of these cross-applications) and (2) Plaintiff pays to Defendants their reasonable attorneys' fees, costs and disbursements in connection with this motion; and it is further

ORDERED that Defendants' counsel shall submit to this Court an application in accordance with the foregoing, which includes an affirmation of services detailing the reasonable attorneys' fees, costs and disbursements associated with this motion, on notice to Plaintiff, within thirty (30) days of the date of this Decision and Order.

This constitutes the Decision and Order of this Court.

Dated: Carmel, New York  
November 29, 2011



Francis A. Nicolai  
Supreme Court Justice

To:  
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