

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D32459
H/prt

_____AD3d_____

Submitted - September 19, 2011

REINALDO E. RIVERA, J.P.
RUTH C. BALKIN
L. PRISCILLA HALL
JEFFREY A. COHEN, JJ.

2010-09831

DECISION & ORDER

HSBC Mortgage Services, Inc., appellant, v
Althea James, respondent, et al., defendants.

(Index No. 101728/08)

Fein Such & Crane, LLP, Chestnut Ridge, N.Y. (Michael S. Hanusek of counsel), for
appellant.

In an action to foreclose a mortgage, the plaintiff appeals from an order of the Supreme Court, Richmond County (McMahon, J.), dated May 5, 2009, which, sua sponte, directed the removal of the name of the defendant Althea James from the subject deed and mortgage.

ORDERED that the appeal is dismissed, without costs or disbursements.

The order dated May 5, 2009, is not appealable as of right, as no appeal lies as of right from an order that does not decide a motion made on notice (*see* CPLR 5701[a][2]). No application has been made for permission to appeal, and we decline to grant leave to appeal under the circumstances of this case, as the record is inadequate to determine the appeal on the merits (*see Independence Constr. Corp. v AMOCO Constr. Corp.*, 33 AD3d 963; *Cuffie v New York City Health & Hosps. Corp.*, 260 AD2d 423, 424).

RIVERA, J.P., BALKIN, HALL and COHEN, JJ., concur.

ENTER:



Matthew G. Kiernan
Clerk of the Court

October 4, 2011

HSBC MORTGAGE SERVICES, INC. v JAMES