

**Deutsche Bank Natl. Trust Co. v Harris**

2008 NY Slip Op 30308(U)

February 5, 2008

Supreme Court, Kings County

Docket Number: 0035549/2007

Judge: Arthur M. Schack

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(E)

At an IAS Term, Part 27 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 5<sup>th</sup> day of February 2008

HON. ARTHUR M. SCHACK J.S.C.

P R E S E N T:

HON. ARTHUR M. SCHACK

Justice

DEUTSCHE BANK NATIONAL TRUST COMPANY,

Plaintiff,

- against -

ROSE HARRIS, *et. al.*,

Defendants.

**DECISION & ORDER**

Index No. 35549/07

The following papers numbered 1 read on this motion:

Papers Numbered:

Proposed Order of Reference with Affidavits/Exhibits \_\_\_\_\_

\_\_\_\_\_ 1 \_\_\_\_\_

Plaintiff's application, upon the default of all defendants, for an order of reference for the premises located at 1038 Remsen Avenue, Brooklyn, New York (Block 7968, Lot 68, County of Kings) is denied without prejudice, with leave to renew upon providing the

[\* 2 ]

Court with a satisfactory explanation to various questions with respect to: the October 23, 2007 assignment of the instant mortgage to plaintiff, DEUTSCHE BANK NATIONAL TRUST COMPANY(DEUTSCHE BANK); the employment history of one Erica Johnson-Seck, who executed the affidavit of facts in the instant application as an officer of DEUTSCHE BANK; plaintiff DEUTSCHE BANK's purchase of the instant non-performing loan; and why does INDYMAC BANK, F.S.B., (INDYMAC), MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. (MERS), and plaintiff DEUTSCHE BANK all share office space at 460 Sierra Madre Villa, Pasadena, CA 91107.

Defendant ROSE HARRIS borrowed \$408,000.00 from INDYMAC on March 24, 2006. The note and mortgage were recorded in the Office of the City Register, New York City Department of Finance on June 9, 2006 at City Register File Number (CRFN) 2006000325131. INDYMAC, by MERS, its nominee for the purpose of recording the mortgage, assigned the note and mortgage to plaintiff DEUTSCHE BANK, on October 23, 2007, with the assignment recorded on November 8, 2007, at CRFN 2007000559884.

According to plaintiff's application, defendant HARRIS' default began with the nonpayment of principal and interest due on May 1, 2007. Yet on October 23, 2007, more than five months later, plaintiff DEUTSCHE BANK accepted the assignment of the instant non-performing loan from INDYMAC.

The Assignment by MERS, on behalf of INDYMAC, was executed by Laura Hescott, Vice President of MERS. The notary public, James G. Morris, stated in the jurat

that the assignment was executed in the State of Minnesota, County of Dakota (Dakota County is located in the Minneapolis-St. Paul metropolitan area, and its county seat is Hastings, Minnesota). The Court is perplexed as to why the assignment was not executed in Pasadena, California, the alleged “principal place of business” for both the assignor and the assignee. The assignment states that MERS, as nominee for INDYMAC, has its “principal place of business at 460 Sierra Madre Villa, Pasadena, CA 91107,” and that DEUTSCHE BANK has its “principal place of business at 460 Sierra Madre Villa, Pasadena, CA 91107, c/o IndyMac Bank F.S.B.”

Plaintiff’s affidavit, submitted in support of the instant application for a default judgment, was executed by Erica Johnson-Seck, who claims to be a Vice President of plaintiff DEUTSCHE BANK. The affidavit was executed in the State of Texas, County of Williamson (Williamson County, Texas is located in the Austin metropolitan area, and its county seat is Georgetown, Texas). The Court is perplexed as to why the assignment was not executed in Pasadena, California, at 460 Sierra Madre Villa, the alleged “principal place of business” for both the assignor and the assignee. In my January 31, 2008 decision (*Deutsche Bank National Trust Company v Maraj*, \_\_\_ Misc 3d \_\_\_ [A], 2008 NY Slip Op 50176 [U]), I noted that Erica Johnson-Seck, claimed that she was a Vice President of MERS in her July 3, 2007 INDYMAC to DEUTSCHE BANK assignment, and then in her July 31, 2007 affidavit claimed to be a DEUTSCHE BANK Vice President. Just as in *Deutsche Bank National Trust Company v Maraj*, at 2, the

Court in the instant action, before granting an application for an order of reference, requires an affidavit from Ms. Johnson-Seck, describing her employment history for the past three years.

Further, the Court requires an explanation from an officer of plaintiff DEUTSCHE BANK as to why, in the middle of our national subprime mortgage financial crisis, DEUTSCHE BANK would purchase a non-performing loan from INDYMAC, and why DEUTSCHE BANK, INDYMAC and MERS all share office space at 460 Sierra Madre Villa, Pasadena, CA 91107.

#### Conclusion

Accordingly, it is

ORDERED, that the application of plaintiff, DEUTSCHE BANK NATIONAL TRUST COMPANY, for an order of reference for the premises located at 1038 Remsen Avenue, Brooklyn, New York (Block 7968, Lot 68, County of Kings), is denied without prejudice; and it is further

ORDERED, that leave is granted to plaintiff, DEUTSCHE BANK NATIONAL TRUST COMPANY, to renew its application for an order of reference for the premises located at 1038 Remsen Avenue, Brooklyn, New York (Block 7968, Lot 68, County of Kings), upon presentation to the Court, within forty-five (45) days of this decision and order, of: an affidavit from Erica Johnson-Seck describing her employment history for the past three years; and, an affidavit from an officer of plaintiff DEUTSCHE BANK

NATIONAL TRUST COMPANY, explaining why: (1) plaintiff DEUTSCHE BANK NATIONAL TRUST COMPANY purchased a nonperforming loan from INDYMAC BANK, F.S.B.; (2) plaintiff DEUTSCHE BANK NATIONAL TRUST COMPANY shares office space at 460 Sierra Madre Villa, Pasadena, CA 91107 with MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., and INDYMAC BANK, F.S.B.; (3) plaintiff DEUTSCHE BANK NATIONAL TRUST COMPANY claims 460 Sierra Madre Villa, Pasadena, CA 91107 as its principal place of business in the October 23, 2007 assignment of the instant mortgage, but executed the assignment in Dakota County, Minnesota; and, (4) plaintiff DEUTSCHE BANK NATIONAL TRUST COMPANY claims 460 Sierra Madre Villa, Pasadena, CA 91107 as its principal place of business in the affidavit in support of the instant application, but the affidavit was executed in Williamson County, Texas.

This constitutes the Decision and Order of the Court.

E N T E R



HON. ARTHUR M. SCHACK  
J. S. C.

HON. ARTHUR M. SCHACK