

Wells Fargo Bank Minnesota National Association v Mastropaolo
2005 NY Slip Op 30092(U)
November 7, 2005
Supreme Court, Richmond County
Docket Number: 0101817/2005
Judge: Joseph J. Maltese
Republished from New York State Unified Court System's E-Courts Service. Search E-Courts (http://www.nycourts.gov/ecourts) for any additional information on this case.
This opinion is uncorrected and not selected for official publication.

WELLS FARGO BANK MINNESOTA NATIONAL
ASSOCIATION, AS TRUSTEE, WITHOUT RECOURSE,

Plaintiff
DECISION & ORDER
HON. JOSEPH J. MALTESE

against

JOSEPH MASTROPAOLO,

Defendants

The following items were considered in the review of this motion for summary judgment

<u>Papers</u>	<u>Numbered</u>
Notice of Motion and Affidavits Annexed	1
Answering Affidavits	2
Exhibits	Attached to Papers

Upon the foregoing cited papers, the Decision and Order on this Motion is as follows:

The plaintiff seeks an order pursuant to CPLR 3211(b) striking the answer and defenses of the defendant and granting the plaintiff summary judgment. Additionally, the plaintiff seeks the referral of this matter to a referee to ascertain and compute the amount due upon the note and mortgage being foreclosed and to report whether the mortgaged premises should be sold in one parcel.

This motion must be denied and the action dismissed as the plaintiff did not have standing to commence an action of foreclosure under the note and mortgage the date this action was commenced. Specifically, this action was commenced with the filing of a summons and complaint with the Richmond County Clerk's Office on June 17, 2005. However, the plaintiff did not take legal title to the mortgage by an assignment until June 20, 2005. Insofar as the plaintiff was not the legal titleholder to the mortgage at the time the action was commenced, they had no standing to bring the action and it must be dismissed.

Accordingly, it is hereby:

ORDERED, that the plaintiff's summary judgment motion is denied in its entirety and that this action is dismissed with prejudice.

ENTER,

DATED: November 7, 2005

Joseph J. Maltese
Justice of the Supreme Court