

U.S. Bank N.A. v Askew
2016 NY Slip Op 02558 [138 AD3d 402]
April 5, 2016
Appellate Division, First Department
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[*1]

U.S. Bank N.A., as Trustee on Behalf of Sasco Mortgage Loan Trust 2007-RNP1, Appellant, v Diana Askew, Respondent, et al., Defendants.

Stim & Warmuth, P.C., Farmingville (Glenn P. Warmuth of counsel), for appellant.

Diana Askew, respondent pro se.

Order, Supreme Court, Bronx County (Lizbeth Gonzalez, J.), entered November 6, 2014, which, to the extent appealed from as limited by the briefs, denied plaintiff's motion for summary judgment, unanimously reversed, on the law, without costs, the motion granted, and the matter remanded for the appointment of a referee to compute the amount due.

A plaintiff may establish standing in a foreclosure action either by showing assignment of the mortgage note or physical delivery of the note prior to the commencement of the foreclosure action ([Bank of N.Y. Mellon Trust Co. NA v Sachar, 95 AD3d 695](#), 695-696 [1st Dept 2012]). Here, plaintiff attempted to show assignment of the mortgage note through a series of allonges. However, the allonges do not all bear the same loan number as the original mortgage note. This creates a fact issue as to whether the allonges are proper ([see HSBC Bank USA, N.A. v Thomas, 46 Misc 3d 429](#), 432-434 [Sup Ct, Kings County 2014]).

Nevertheless, plaintiff sufficiently demonstrated physical delivery of the note prior to commencement of the action ([*see Aurora Loan Servs., LLC v Taylor*, 25 NY3d 355, 360-361\[*2\]\[2015\]](#)). Therefore, plaintiff was entitled to summary judgment. The reference to compute is made under CPLR article 40 and not RPAPL 1321. Concur—Mazzarelli, J.P., Moskowitz, Richter and Gische, JJ.