

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS**

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U.S. BANK NATIONAL ASSOCIATION, etc.,

Plaintiff(s),

DECISION/ORDER

-against-

Index No. 34/10

DONNETTE SMITH, et al.

Defendant(s)

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Recitation, as required by CPLR 2219(a), of the papers considered on the review of this motion by defendant for summary judgment and for a finding that plaintiff failed to comply with the good faith requirement in CPLR 3408(f)

PAPERS	NUMBERED
Order to Show Cause and Affidavits Annexed	1
Answering Affidavits	2 & 3
Reply Affidavits	
Memorandum of Law	3, 4, & 5
Referral of the Referee dated November 28, 2012	6
Decision and Order dated October 5, 2012	7

Upon the foregoing cited papers the Decision/Order on the motion is as follows:

Defendant moves for summary judgment asserting that plaintiff can not establish that it is the owner of the note and mortgage. The motion must be denied.

In opposition to the motion, plaintiff's counsel asserts that they, as plaintiff's agent, are in possession of the promissory note. In connection with this matter, counsel produced the original note for inspection by the court. ACRIS shows an assignment of the mortgage to the plaintiff dated December 18, 2009, recorded on February 9, 2010. This is sufficient to defeat the motion for summary judgment regarding plaintiff's ownership of the note and mortgage.

In regard to defendant's motion for a finding that plaintiff failed to comply with the good faith requirement contained in CPLR 3408(f), in the decision and order of October 5, 2012, this court previously found that plaintiff failed to meet its obligations by failing to comply with the directions of the J.H.O.s and referees in the conference part to produce documentation to support its claims. It was only when this court ordered the production of this documentation, under threat of sanction as a willful failure to comply with discovery under CPLR 3126, that plaintiff complied and produced the documentation. In the decision and order of October 5, 2012 this

court found plaintiff had not acted in good faith by failing to comply with the directions of the J.H.O.s and referees in the conference part.

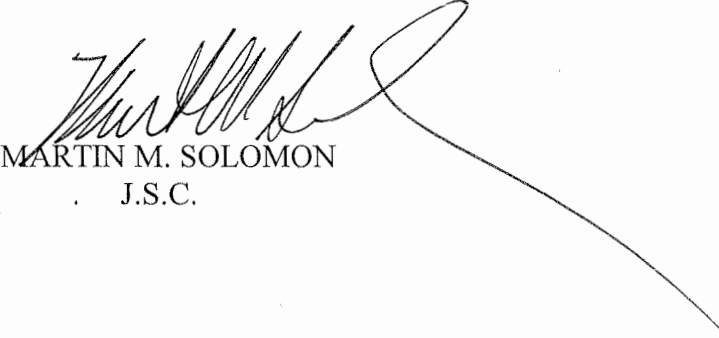
The suspension of interest dates from the Order to Show cause, signed by Justice Martin, on September 25, 2012 and was continued by this court's order of October 5, 2012, pending further order of the court. The plaintiff has not previously or, indeed, currently moved to lift the suspension of interest. However, the plaintiff has now complied with the production of documents and in the interests of justice the court lifts the suspension as of the date of this decision and order.

Interest from October 5, 2012 through July 5, 2013 remains suspended, waived and forfeit. Plaintiff is barred from charging, claiming or collecting interest for this nine month period in this case or in any other action in any court. Any claim, modification or pay off made, considered or issued by plaintiff shall not include interest for this period.

Defendant's motion for summary judgment is denied. The motion for a finding that plaintiff failed to comply with the good faith requirement contained in CPLR 3408(f) and for sanctions, is granted to the extent indicated.

The matter is set down for a preliminary conference for August 7, 2013.

Dated July 5, 2013



MARTIN M. SOLOMON
J.S.C.