

Plaintiff bank has failed to establish that it was the holder of the note and mortgage forming the basis for this foreclosure action at the time the action was instituted. New Century Mortgage Corp. is the lender on the note. MERS as nominee of New Century “for purposes of recording”, took the mortgage as the mortgagee of record. In support of the right to maintain this action plaintiff, Deutsche Bank, offers an assignment of the mortgage from MERS as nominee to

DEUTSCHE BANK NAT'L vs. LEIGH, et al. (INDEX NO. 013682/08) 2.

Deutsche Bank dated July 31, 2008. There is nothing before the Court, however, to indicate that MERS, a nominee "for purposes of recording this mortgage", had authority to execute an assignment. More importantly, the papers before the Court are devoid of proof that the mortgage note was transferred, assigned or negotiated to plaintiff prior to the institution of the action.

This order concludes the within proceeding.

ENTER:

Dated: 3/31/09
Mineola, NY



HON. EDWARD G. McCABE
Supreme Court Justice

EGM/jt/hh