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MOT. SEQ. # 002

SUPREME COURT - STATE OF NEW YORK
I.A.S. TERM, PART XXIV - SUFFOLK COUNTY

PRESENT:
Hon. PETER FOX COHALAN

-----x
BENEFICIAL HOMEOWNER SERVICE CORPORATION,

Plaintiff(s),

-against-

ESTELLE PHIFER, JOHN PHIFER, CACH LLC,

Defendant(s).

-----x

CALENDAR DATE: January 12, 2011
MNEMONIC: MD

PLTF'S/PET'S ATTORNEY:
Steven J. Baum, Esq.
220 Northpointe Parkway
Amherst, NY 14228

DEFT'S/RESP ATTORNEY:
Jacobson, Goldberg & Kulb, LLP
585 Stewart Avenue, Suite 720
Garden City, NY 11530

ORDERED that this motion for judgment of foreclosure and sale in this mortgage foreclosure action is denied without prejudice to renew upon the presentation of proper papers.

Pursuant to an Administrative Order of the Chief Judge, dated October 20, 2010, all residential mortgage foreclosure actions require an affirmation from the attorney representing the plaintiff/lender/bank, as stated in the affirmation attached to this order, that he/she has inspected all documents.

The plaintiff is also directed on any future application to provide a copy of this Court's order, the prior application/motion papers and an updated affidavit of regularity/merit from the plaintiff/lender/bank's representative that he/she has reviewed the file in this case and that he/she documents that all paperwork is correct. The plaintiff/lender/bank's representative shall also provide in said affidavit of regularity her/his position, length of service, training, educational background and a listing of the documents and financial records reviewed substantiating the review of the amounts owed. The affidavit should also include that she/he has personally reviewed both the mortgage and the note and any assignments for accuracy.

The plaintiff bears the burden of proof in a summary judgment proceeding and judgment will only be awarded when all doubt is removed as to the existence of any triable issue of fact. Under the present circumstances, where there have been numerous instances alleged as to "robo" signing of documents and a failure to attest to the accuracy of documents in mortgage foreclosure proceedings, the plaintiff must prove its entitlement to foreclose on a mortgage as a matter of law by establishing the regularity and accuracy of the financial documentary evidence submitted and the Court will be scrutinizing all documents for accuracy.

The foregoing constitutes the decision of the Court.

Dated: January 13, 2011



J.S.C.

