

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION: CASE NO. 2009-CA-23447, DIV I

THE BANK OF NEW YORK MELLON F/K/A
THE BANK OF NEW YORK AS TRUSTEE FOR
THE CERTIFICATEHOLDERS CWABS, INC.
ASSET-BACKED CERTIFICATES, SERIES 2006-09,

Plaintiff,

vs.

CATHLEEN M. MAYHER, et al.

Defendant(s).

ORDER ON DEFENDANT'S MOTION TO DISMISS

This cause came upon Defendant's Motion to Dismiss. This Court having heard argument, considered case law, and being otherwise fully advised in the premises enters this order based on the following findings and conclusions:

1. Plaintiff's complaint fails to state a cause of action as there is no documentary link in the nature of a mortgage assignment or transfer connecting the named Plaintiff as a successor in interest to the attached note and mortgage which are in the name of and run to the benefit of other entities. See BAC Funding Consortium, Inc. v. Jean-Jacques, 28 So. 3d 936 (Fla. 2nd DCA, Feb 2010).

2. Additionally, Plaintiff conceded during oral argument and in filings it has made in the record that it has found the lost promissory note and therefore the allegations contained in its complaint regarding reestablishment of the lost note should be removed/withdrawn as they are no longer applicable.

3. That as of the hearing date only one other defendant had filed an answer/affirmative

defenses, that being, BRANDON BROOK HOMEOWNERS ASSOCIATION, INC.

IT IS THEREFORE ORDERED AND ADJUDGED as follows:

1. Defendant's Motion to Dismiss the complaint is GRANTED, provided however, that Plaintiff shall have a period of 20 days from the entry of this order to file an amended complaint and the Defendants shall have 20 days to respond thereto.

2. That the Defendant, BRANDON BROOK HOMEOWNERS ASSOCIATION, INC., shall have the option of standing by its original filed answer and affirmative defenses as against the amended complaint should same be filed by Plaintiff, or responding anew.

DONE AND ORDERED, in Chambers at ~~Pinellas~~ ^{Hillsborough} County, Florida, on this _____ day of _____, 2010.

ORIGINAL SIGNED
CONFORMED COPY

MAY 24 2010

CIRCUIT JUDGE

HERBERT J. BAUMANN, JR.
CIRCUIT JUDGE

cc: Gregory D. Clark, Esq., attorney for Defendant Mayher
Cindy Wolper Borzillo, Esq. & R. Nicholas Bohn, Esq., attorney for Plaintiff
Leslie M. Conklin, Esq., attorney for Defendant HOA