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At an IAS Term, Part 21 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at the Civic Center, Brooklyn, New York on the 4<sup>th</sup> day of December, 2006

PRESENT:

HON. LAURA L. JACOBSON

Justice

-----X Index No.:16705/2006

EQUITY ONE AS SERVICER FOR NOMURA HOME EQUITY LOAN INC. HOME EQUITY LOAN TRUST SERIES 2006-FM1, ASSET BACKED PASS-THROUGH CERTIFICATES, SERIES 2006-FM1,

Plaintiffs,

-against-

INTERIM ORDER

JANICE JAMES, MERS, INC. AS NOMINEE FOR FREMONT INVESTMENT & LOAN ; PEOPLE OF THE STATE OF NEW YORK; NEW YORK CITY PARKING VIOLATIONS BUREAU; NEW YORK CITY ENVIRONMENTAL CONTROL BOARD; TRANSIT ADJUDICATION BUREAU, "JOHN DOE 1 to JOHN DOE 25", said names being fictitious, the persons or parties, corporations or entities, if any, having or claiming an interest in or lien upon the mortgaged premises described in the complaint,

Defendants.

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Plaintiff submitted an Order of Reference for this mortgage foreclosure matter seeking inter alia the appointment of a Referee.

Upon a review of the papers, I noted several items that needed further explanation before I can consider the plaintiff's request:

1. This foreclosure proceeding involves a mortgage, dated September 7, 2005 which was allegedly assigned on June 6, 2006 to the plaintiff. However, the Notice of Pendency, which is dated May 26, 2006 and filed with the County Clerk on June 1, 2006 reflects the fact that the plaintiff, who is the assignee, did not receive any rights to this property until June 6, 2006. Movant must submit an affidavit/affirmation from one with personal knowledge who can explain how the Notice of Pendency could be filed with a plaintiff who did not yet have any rights.

2. The proposed Order sets forth a request that the referee be paid \$250 as compensation. Is the movant seeking to provide the referee with additional compensation above and beyond the \$550 given to the referee for the calculations and for conducting the foreclosure sale?

3. The caption lists Equity One as the servicer for Nomura Home Equity Loan, Inc. If Nomura Home Equity Loan, Inc. is the real party in interest, then the Affidavit of Merit must be submitted by an Officer or principal of Nomura Home Equity Loan, Inc.

4. When did Fremont Investment & Loan execute a second mortgage with the defendant Janice James? In what amount was the second mortgage? Was the initial mortgage a purchase money mortgage?

5. The Affidavit of Merit submitted by the plaintiff appears to have been prepared by one Victor F. Parisi. The signor or the assignment of the mortgage, on behalf of MERS, Inc. as nominee for Fremont Investment & Loan, is also named Victor F. Parisi. Are these two signators the same people? If so, movant must submit an affidavit/affirmation advising the Court as to whether the assignment is a valid transfer or simply a paper one.

6. The Notice of Default was allegedly sent to the defendant James by Equity One as servicer for Nomura Home Equity Loan on or about March 28,

2006. If however, Equity One had no right, title or interest in this property until June 6, 2006, they appear to have had no right to seek payment of the mortgage on March 28, 2006. Did the entity with the right, title and interest send a Notice of Default to the defendant prior to the initiation of this lawsuit? If so, kindly provide the Court with a copy of that notice. If not, kindly advise the Court why not.

7. Once the assignment took effect, did the loan servicer change? If so, did the defendant James receive notice of the change pursuant to paragraph 20 of the mortgage? If notice was sent, kindly provide the Court with a copy of the notice. If no notice was sent kindly advise the Court of the reason.

The movant's attorney should submit additional affirmations/affidavits to the Court within sixty days of today's date to provide the information requested above.

All submissions should be made directly to chambers at 360 Adams Street, Room 776, Brooklyn, New York 11201.

ENTER

  
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LAURA L. JACOBSON, JSC

HON. LAURA JACOBSON