

**JUDGMENT FOR DEFENDANT(S)  
FOR POSSESSION AND RENT**

DOCKET NUMBER

201014SU000264

Trial Court of Massachusetts  
District Court Department  
Summary Process Session



CASE NAME HSBC BANK USA vs. MARIA E. HARO

PLAINTIFF(S) WHO ARE PARTIES TO THIS JUDGMENT

P01 HSBC BANK USA

CURRENT COURT

Chelsea District Court  
120 Broadway  
Chelsea, MA 02150-2641  
(617) 660-9200

DEFENDANT(S) WHO ARE PARTIES TO THIS JUDGMENT

D01 MARIA E. HARO

ROOM/SESSION

←←←←←  
WHEN  
YOU  
MUST  
APPEAR  
←←←←←

PARTY TO WHOM THIS COPY OF JUDGMENT IS ISSUED

D01 MARIA E. HARO  
AND ALL OTHER OCCUPANTS  
47 IRVING STREET  
REVERE, MA 02151

ATTORNEY FOR PARTY TO WHOM THIS COPY OF JUDGMENT IS ISSUED

D01 ZOE KEHRWALD CRONIN  
GREATER BOSTON LEGAL SERVICES  
197 FRIEND STREET  
BOSTON, MA 02114

SUBJECT PREMISES

47 IRVING STREET REVERE, MASSACHUSETTS 02151

**JUDGMENT FOR DEFENDANT(S) FOR POSSESSION AND RENT**

On the above action, after trial by a judge, the issues having been duly tried or heard, and a finding or verdict having been duly rendered, IT IS ORDERED AND ADJUDGED by the Court ( Wexler, Hon. James H. ) that judgment enter in favor of the Defendant(s) named above for possession of the subject premises shown above, that the Plaintiff(s) named above take nothing for rent, use and occupation, and that the Defendant(s) recover of the Plaintiff(s) his(her)(their) costs pursuant to law.

**NOTICE OF ENTRY OF JUDGEMENT**

Pursuant to Mass. R. Civ. P. 54, 58, 77(d) and 79(a) and Uniform Summary Process Rule 10(d), this Judgment has been entered on the docket on the "Date Judgment Entered" shown below, and this notice is being sent to all parties. Attached are any rulings of law, or any findings of fact and rulings of law, which may have been made by the Court pursuant to Mass. R. Civ. P. 52(c) or 64A(c).

DATE JUDGMENT ENTERED  
06/15/2011

CLERK-MAGISTRATE/ASST. CLERK

X

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

DISTRICT COURT  
CHELSEA DIVISION  
201014SU000264

HSBC BANK USA, N.A,  
as Trustee on Behalf of ACE Securities Corp.  
Home Equity Loan Trust and  
For the Registered Holders of ACE Securiteis Corp,  
Home Equity Loan Trust Series 2005-HE6, Asset  
Backed Pass-through Certificates,  
c/o Kordes @ Associates, P. C.  
Plaintiff,

V.

MARIA E. HARO,  
Defendant.

DECISION ON THE CROSS MOTIONS BY THE PARTIES

This matter has been the subject of a number of hearings.. The parties also made numerous efforts to resolve the matter. However, those efforts were not successful. There are no material facts that are in dispute. What is in dispute are legal issues which the parties have extensively briefed. If the matter is appealed, any reviewing court will look at the legal issues anew. As such, the Court will give a brief summary of its rulings and issue its order.

The decision of the Court is controlled by U.S. Bank National Association v. Ibanez, 458 Mass. 637. (2011).

The plaintiff has maintained that this action should proceed because it has established that has legal title to the property and the purpose of summary process is to let the holder of legal title to real property to gain possession of premises wrongfully withheld. The plaintiff argues that it has met the burden of a prima facie case and that if the defendant wishes to challenge the ability

of the plaintiff to proceed in this action, it must do so in another court. However, at that last argument before the court, the parties agreed that Ibanez, controlled and its holdings should be applied by this court as to whether the plaintiff has the standing to bring this action.

The Court finds that following:

The plaintiff is identified as HSBC Bank USA, N.A. as Trustee on behalf of ACE Securities Corp. Home Equity Loan Trust and for the Registered Holders of ACE Securities Corp Home Equity Loan Trust Series 2005-HE6, Asset Backed Pass-Through Certificates. The defendant submitted the Pooling and Servicing Agreement into evidence. This document sets forth the definition of the Trust as well as the rights, duties and obligations the rights of the Trustee.

There is no dispute that the defendant executed a Note and Mortgage on which she defaulted and has failed to meet her obligations under the Note and Mortgage. It is not disputed that the defendant is not in a position to avoid a foreclosure if one were properly brought. There is no dispute that if there were a proper assignment of the Note and Mortgage, the plaintiff would be in a position to proceed with this action.

The defendant has raised many arguments that the assignment of the mortgage in this matter was made in violation of the Pooling and Servicing Agreement. The defendant contends that the Pooling and Services Agreement created a Real Estate Mortgage Investment Conduit ("REMIC") which must comply with the relevant tax regulations as well as state law. See Pooling and Service Agreement, Sections 2.03, 3.01, 4.02 and 11.01-11.03. The defendant further contends that the Trustee was only authorized to accept mortgages into the Trust prior to September 28, 2007. The defendant further argues that the Trustee's assignment in this matter dated December 21, 2005, but executed on August 3, 2009 was not proper because the effective date under the Statute of Frauds, c.259, Section 1, the assignment was not in recordable form until August 3, 2009 and thus violated the term "assignment" as defined in Section 1.01 of the Pooling and Servicing Agreement. The defendant has also argued that the Trust was required to comply with New York law, see Sections 2.09 and Sections 12.04 of the Pooling and Servicing Agreement, that the Trustee violated the terms of the Trust and under New York law, the conveyance in this instance is void. An additional argument is made that the chain of the assignment involving Fremont Invest and Loan was not proper because of a bankruptcy.

The Court will not address those arguments because of its finding that the plaintiff has not demonstrated that it is the proper party to bring this action..

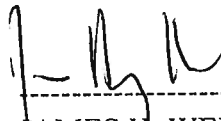
In Ibanez, at 649-651, the Court held that the assignment of a mortgage is a conveyance of an interest in land that requires a writing signed by the grantor. Because Massachusetts is a title theory state, a mortgage is a transfer of legal title in a property to secure a debt. When a person borrows money to purchase a home and gives the lender a mortgage, the mortgagor retains equitable title and the legal title is held by the mortgagee. When mortgage loans are pooled together in a trust and are converted to mortgage back securities, the mortgages are still legal title to the mortgagor's home. To proceed, a copy of the executed trust agreement must be

submitted to the court. If there is an executed agreement, there must be an exhibit or schedule that as, in this case, that the Haro mortgage was one of the mortgages to be assigned. Such an exhibit or schedule has not be submitted. Thus, contrary as required, the Pooling and Servicing Agreement does not identify with the required specificity that the Haro loan was assigned. Further, the Pooling and Servicing Agreement sets forth a transfer of ownership from ACE Securities to the Trust. No documents have been presented that demonstrate that ACE Securities held the mortgage that it assigned through the Pooling and Servicing Agreement.

The general overarching concept of what entity can proceed when it is not the original mortgagee is discussed in Ibenez. A foreclosing entity may provide a complete chain of assignment linking it to the record holder of the mortgage, or a single assignment from the record holder of the mortgage. The foreclosing entity must hold the mortgage at the time of the notice and sale in order accurately to identify itself as the present holder in the notice and in order to have the authority to foreclose under the power of sale for the foreclosing entity must be one of the parties authorized to do so under state law. And as mentioned in the concurring opinion, banks have been incredibly sloppy in their paperwork.

Judgment shall enter for the defendant. Furthermore, since the plaintiff has failed to meet its burdens, all monies which have been paid by the defendant pursuant to any order of this Court must be returned to the defendant forthwith. There is no question monies are due from Haro. The plaintiff has failed to demonstrate that it is the entity which is entitled to collect those monies.

SO ORDERED

  
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JAMES H. WEXLER  
JUSTICE

JUNE , 2011