

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS:

HOUSING COURT DEPARTMENT  
CITY OF BOSTON DIVISION  
SUMMARY PROCESS  
NO. 10H84SP004114

**US BANK NATIONAL ASSOCIATION, as Trustee for the benefit  
of the holders of SerVertis I Trust 2008-1 Certificates, Series 2008-1**  
Plaintiff

VS.

**CLERIDA RODRIQUEZ and TATIANA MIRANDA,**  
Defendants

**MEMORANDUM OF DECISION ON MOTION FOR JUDGMENT ON THE  
PLEADINGS (SUMMARY JUDGMENT)**  
**AND**  
**ORDER OF JUDGMENT**

This is a summary process action in which plaintiff US Bank National Association, as Trustee for the benefit of the Holders of SerVertis I Trust 2008-1 Certificates, Series 2008-1, is seeking to recover possession of the residential property known as 52 McLellan Street, in the Dorchester section of Boston, from defendants Clerida Rodriguez and Tatiana Miranda. The defendants filed a written answer that included affirmative defenses and counterclaims. However, because defendant Clerida Rodriguez (the former owner) and defendant Tatiana Miranda (her daughter) never rented or leased the premises, they are not entitled to assert counterclaims in this summary process action pursuant to G.L. c. 239, § 8A, ¶1. For this reason, the court dismissed their G.L. c. 239, § 8A defenses and counterclaims without prejudice.<sup>1</sup>

This matter is before the Court on the plaintiff's **Motion for Judgment on the Pleadings**. The plaintiff's motion was accompanied by certified copies of a number of documents that had been recorded with the Suffolk County Registry of Deeds. The defendant filed a written opposition to the motion accompanied by three of the documents that had been

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<sup>1</sup> See order dismissing counterclaims, dated January 18, 2011, Winik, J.

submitted as part of the plaintiff's motion. Since the parties have asked the court to consider documents that include facts outside the pleadings, I shall consider the motion as one for summary judgment.

After reviewing the summary judgment record and considering the arguments of the parties, the plaintiff's motion is **ALLOWED**.

The standard for review on summary judgment "is whether, viewing the evidence in the light most favorable to the non-moving party, all material facts have been established and the moving party is entitled to a judgment as a matter of law." *Augat, Inc. v. Liberty Mut. Ins. Co.*, 410 Mass. 117, 120 (1991). See Mass. R. Civ. P. 56 (c).

The facts material to the issue of whether US Bank or the defendants has a superior right to possession of the premises are not in dispute.

Defendant Clarida Rodriguez is the former owner of the residential property at 52 McLellan Street, in the Dorchester section of Boston ("property"). Defendant Tatiana Miranda is her daughter. On July 12, 2007, Rodriguez obtained a loan from Lehman Brothers Bank, FSB ("Lehman Brothers"). The loan was secured by a first mortgage on the property. Mortgage Electronic Registration Systems ("MERS") held the mortgage as nominee for Lehman Brothers.<sup>2</sup> Rodriguez defaulted on her mortgage loan obligation. On September 29, 2009, MERS assigned the mortgage to plaintiff US Bank National Association, as trustee, in trust for the benefit of the Holders of SerVertis Fund I Trust 2008-1 Certificates, Series 2008-1 ("US Bank").<sup>3</sup> US Bank foreclosed on the property in accordance with the provisions of G.L. c. 244, § 14. US Bank was the high bidder at the foreclosure auction that took place on March 26, 2010. See, compliance affidavit of Josh Degneau, dated June 30, 2010.<sup>4</sup> On June 30, 2010, US Bank executed and

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<sup>2</sup> The mortgage was recorded at the Suffolk Registry of Deeds at Book 41154, page 307.

<sup>3</sup> The assignment included a scrivener's error that omitted the word "Association" from the plaintiff's name. That error was corrected in a document entitled "Confirmatory Assignment of Mortgage" executed by MERS on March 10, 2010. The defendants do not challenge the validity of the confirmatory assignment.

<sup>4</sup> The affidavit, issued in accordance with G.L. c. 244, § 15, states in relevant part that Rodriguez was in default on mortgage loan obligations, the notice of scheduled mortgagee's sale was published in the Boston Globe once a week over a consecutive three week period, that BoA send the statutory notice to the defendant by certified mail, return receipt requested, in accordance with G.L. c. 244, § 14 and that US Bank, as trustee, was the high bidder at the foreclosure auction.

delivered to itself a foreclosure deed that conveyed good, clear and marketable title to property.<sup>5</sup> The defendants never rented or leased the property and never occupied the premises as tenants prior to the foreclosure sale. The defendants have continued to occupy the premises after the foreclosure. The defendants have never entered into a tenancy with US Bank. On September 18, 2010, US Bank served the defendants with a legally sufficient notice to vacate.

The defendants did not present any documents or affidavits that would raise a factual dispute with respect to any of the aforesaid acts taken by Lehman Brothers, MERS or US Bank.

Based upon the undisputed facts set forth in the summary judgment record, I rule that US Bank's right to possession of the property, based upon US Bank's status as the post-foreclosure owner, is superior to any possessory interest Rodriquez or her daughter, Tatiana Miranda, currently have as holdover occupants of the property. The undisputed evidence in the summary judgment record is sufficient to establish that US Bank held the mortgage at the time of foreclosure and that it complied with the notice provisions of G.L. c. 244, § 14.<sup>6</sup> The defendants argue that summary judgment should not enter in favor of US Bank because they suggest it is possible that the assignment of the mortgage from MERS to US Bank was void. The defendants reason that if "the purported assignment took place before the Plaintiff existed as a legal entity" the assignment would be void and therefore the subsequent foreclosure by US Bank likewise would be void. Rule 56(e) provides that "[w]hen a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Measured against this standard, the defendants' creative argument is wholly speculative and is not supported by any specific facts or documents in the summary judgment record.

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<sup>5</sup> On August 30, 2010, US Bank recorded the deed in the Suffolk Registry of Deeds at Book 46839, Page 154.

<sup>6</sup> In the absence of any evidence in the summary judgment record that would tend to show that US Bank did not hold the mortgage at the time of foreclosure or that it failed to comply with the notice provisions of G.L. c. 244, § 14, I find unpersuasive and therefore reject the argument, based on the case of *FNMA v. Saric*, 2010 Mass.App. Div. 177, 2010 WL 3299173 (August 19, 2010), that US Bank's compliance affidavit prepared under G.L. c. 183, § 8, c. 183 Appendix (Form 12) and c. 244, § 15, was insufficient as a matter of law to show compliance with its obligations under G.L. c. 244, § 14. To the extent that *FNMA v Saric* reached a contrary conclusion I decline to adopt the reasoning of that case.

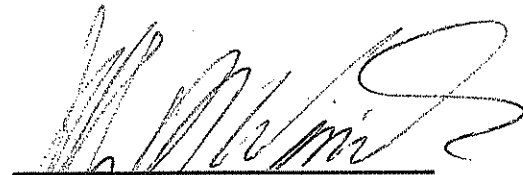
Accordingly, US Bank is entitled to summary judgment as a matter of law on its claim for possession.

**ORDER FOR JUDGMENT**

Based upon all the credible evidence submitted as part of the summary judgment record in light of the governing law, it is **ORDERED** that:

1. Judgment enters for the plaintiff for possession only.
2. Execution for possession shall issue on May 31, 2011.
3. Defendant's counterclaims are **dismissed without prejudice**.

**SO ORDERED.**



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**JEFFREY M. WINIK**  
**FIRST JUSTICE**

**April 22, 2011**

**cc: Matthew Braucher, Esq.**  
**Clerida Rodriguez**  
**Tatiana Miranda**  
**David Grossman, Esq.**