

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

33013

GMAC Mortgage LLC n/k/a Bank Of America, N.A.,  
As trustee for Morgan Stanley Loan Trust 2006-16AX,  
Plaintiff/Counter-Defendant,

vs.

RICHARD DANIGGELIS,  
Defendant/Counter-claimant and  
Cross-claimant,

No.: 07 CH 29738

Joseph Younes, Mortgage Electronic Registration Systems,  
Inc., as nominee for HLB Mortgage, Unknown Heirs and  
legatees of Joseph Younes and unknown owners,  
Defendants/Cross-Defendants,

Paul Shelton, Erika Rhone and Stewart Title of Illinois,  
Respondents in Discovery.

3500  
3004

DEFENDANT RICHARD DANIGGELIS' COMBINED MOTIONS TO  
STRIKE AND DISMISS THE SECOND AMENDED COMPLAINT

COUNT I

MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED  
COMPLAINT PURSUANT TO 735 ILCS 5/2-619(a)(2)

NOW COMES Defendant, RICHARD DANIGGELIS, and pursuant to 735 ILCS 5/2-619  
(a)(2) moves this Court to Strike Plaintiff's Second Amended Complaint. In support of his  
motion Richard Daniggelis states as follows:

1. Plaintiff filed its Second Amended Complaint as an assignee of GMAC Mortgage LLC.
2. The original mortgagee was M.E.R.S., Inc.
3. Plaintiff's Second Amended Complaint does not allege anything about how GMAC obtained any interest in this property, and the assignment from GMAC to LaSalle Bank National Association appears invalid on its face.

4. Plaintiff's Second Amended Complaint contains Exhibit "C", a purported assignment of mortgage from GMAC to LaSalle Bank National Association. The purported assignment is attached to this Motion as Exhibit "A". This assignment fails to identify the original mortgagor, it indicates that the mortgage in question was recorded on August 18, 2006 while Plaintiff's Complaint alleges that this same mortgage was recorded on August 16, 2006.

5. Moreover, Plaintiff's Exhibit "C" indicates that this mortgage was recorded in the county of Adams, State of Illinois under document number: 0622826139. Plaintiff's Complaint, however, is based on the mortgage that was recorded in Cook County under document number: 0622826138. See Exhibit "A" attached to Plaintiff's Second Amended Complaint.

6. In addition, Plaintiff Exhibit "C" indicates that at the time of the execution of this instrument the assignor did not have legal description of the property allegedly secured by the mortgage being assigned to LaSalle Bank National Association.

7. Similarly, Plaintiff's Exhibit "C" indicates that the 'signing officers' signed this Exhibit "C" on November 23, 2009 while the second page of this Exhibit "C" indicates that they appeared before a Notary Public and supposedly executed this instrument on November 26, 2009, further indicating that this assignment is invalid.

Wherefore Defendant, Richard Daniggelis prays for an order dismissing Plaintiff's Second Amended Complaint with prejudice pursuant to 735 ILCS 5/2-619(a)(2) because Plaintiff, Bank of America, does not have standing to pursue this action.

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Third block of faint, illegible text, continuing the document's content.

Fourth block of faint, illegible text, showing further progression of the document.

Fifth block of faint, illegible text, possibly a concluding paragraph or a list.

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## COUNT II

### MOTION TO STRIKE COUNT II OF PLAINTIFFS SECOND AMENDED COMPLAINT PURUSANT TO SECTION 735 ILCS 5/2-615

NOW COMES the Defendant, RICHARD DANIGGELIS, and pursuant to 735 ILCS 5/2-615 moves this Court to Strike Count II of Plaintiff's Second Amended Complaint. In support of his motion Richard Daniggelis states as follows:

1. In Count II of the Second Amended Complaint Plaintiff is attempting to state a cause of action against Richard Daniggelis and against Joseph Younes based on subrogation.

2. In its relevant part the 735 ILCS 5/2-403(c) states as follows:

Sec. 2-403 (c) Any action hereafter brought by virtue of the subrogation provision of any contract or by virtue of subrogation by operation of law shall be brought either in the name or for the use of the subrogee; and the subrogee shall in his or her pleading on oath, or by his or her affidavit if pleading is not required, allege that he or she is the actual bona fide subrogee and set forth how and when he or she became subrogee. (Source: P.A. 83-707.)

3. In Count II of its Second Amended Complaint Plaintiff fails to allege that it is the actual bona fide subrogee. Moreover, Count II of Plaintiff's Second Amended Complaint fails to allege required details about how and when Plaintiff became a subrogee of Deutsch Bank and Trust.

4. Under Illinois law, the doctrine of "equitable subrogation" is predicated on the principle that substantial justice is obtained by allowing one who has indemnified another, pursuant to a legal obligation, to step into the shoes of the one whose claim or debt has been paid. National Union Ins. Co. V. Dowd & Dowd, P.C. 2 F. supp. 2d 1013 N.D. Ill. 1998.

5. In Count II of the Second Amended Complaint Plaintiff is attempting to allege a cause of action based on equitable subrogation. However, Plaintiff fails to allege any facts indicating that Plaintiff had a legal obligation to pay the claim of Deutsch Bank and Trust and thus Count II of the Second Amended Complaint fails to state a prima facie case for equitable subrogation.

6. The mere conclusion in paragraph number 29 of Count II of the Second Amended Complaint that Plaintiff's "mortgage was subrogated to the lien priority of Deutsch mortgage" is not sufficient for purposes of compliance with Section 2-403(c).

7. In addition, in paragraph number 27 of Count II Plaintiff is alleging that this Count II is in reality a complaint to foreclose the mortgage held by Deutsch Bank and Trust. Plaintiff fails to allege and/or attach any such mortgage and/or assignments and thus this Count, in its current form, must be stricken.

Wherefore, Defendant, Richard Daniggelis, prays for an order striking Count II of Plaintiff's Second Amended Complaint pursuant to 735 ILCS 5/2-615.

### COUNT III

#### MOTION TO DISMISS COUNT II OF PLAINTIFFS SECOND AMENDED COMPLAINT PURUSANT TO SECTION 735 ILCS 5/2-619

NOW COMES the Defendant, RICHARD DANIGGELIS, and pursuant to 735 ILCS 5/2-619 moves this Court to Dismiss Count II of Plaintiff's Second Amended Complaint. In support of his motion Richard Daniggelis states as follows:

1. In Count II of the Second Amended Complaint Plaintiff is attempting to state a cause of action against Richard Daniggelis and against Joseph Younes based on subrogation.

2. Section 2-619 (a) (7) states that Defendant may, within the time for pleading, file a motion for dismissal of the action based on the fact that the claim asserted is unenforceable under the provisions of the Statute of Frauds.

3. In its relevant part the Illinois Statute of Frauds states as follows:

(740 ILCS 80/2) (from Ch. 59, par. 2)

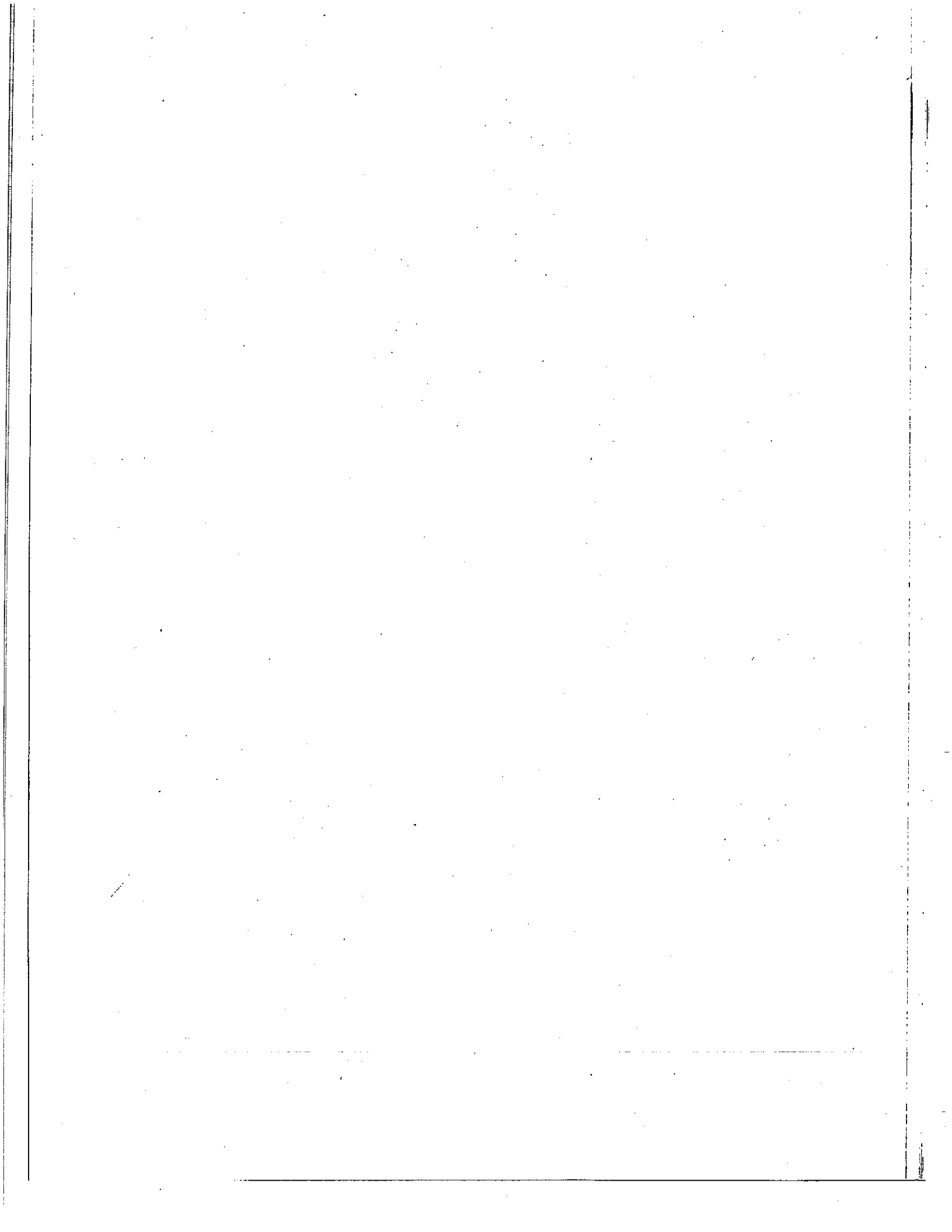
Sec. 2. No action shall be brought to charge any person upon any contract for the sale of lands, tenements or hereditaments or any interest in or concerning them, for a longer term than one year, unless such contract or some memorandum or note thereof shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized in writing, signed by such party. This section shall not apply to sales for the enforcement of a judgment for the payment of money or sales by any officer or person pursuant to a judgment or order of any court in this State.

(Source: P.A. 83-346.)

4. Under Illinois law, the doctrine of "equitable subrogation" is predicated on the principle that substantial justice is obtained by allowing one who has indemnified another, pursuant to a legal obligation, to step into the shoes of the one whose claim or debt has been paid. National Union Ins. Co. V. Dowd & Dowd, P.C. 2 F. supp. 2d 1013 N.D. Ill. 1998.

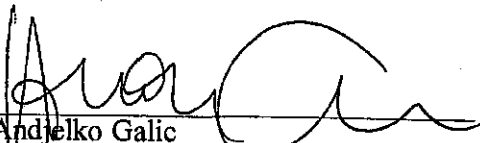
5. In Count II of the Second Amended Complaint Plaintiff is attempting to allege equitable subrogation against Defendants. Plaintiff, however, fails to attach any written documents indicating that Plaintiff had a legal obligation to indemnify Deutsche Bank and Trust when it allegedly paid the claim of Deutsch Bank and Trust.

6. Plaintiff's subrogation claim in Count II is concerning an interest in real estate and it is not based on a written instrument, and thus it must be dismissed with prejudice pursuant



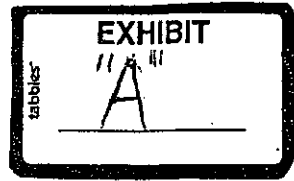
to 735 ILCS 5/2-619(a)(7) as unenforceable under the provisions of the Illinois Statute of Frauds.

Wherefore, Defendant Richard Daniggelis prays for an order dismissing Count II of Plaintiff's Second Amended Complaint with prejudice pursuant to 735 ILCS 5/2-619(a)(7).

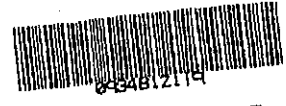


Andjelko Galic  
Attorney for Defendant

Law Offices of Andjelko Galic  
134 N. LaSalle Street  
Suite 1810  
Chicago, Illinois 60602  
Tel. (312) 986-1510  
Attorney No.: 33013



Document prepared By:  
Ron Meharg, 888-362-9638  
1111 Alderman Dr., Suite 350, Alpharetta,  
GA 30005



Doc#: 0934812119 Fee: \$40.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 12/14/2009 01:21 PM Pg: 1 of 3

DOCX  
1111 Alderman Dr., Suite 350  
Alpharetta, GA 30005

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Secondary Ref. #: 2000538996  
CRef#:09/09/2009-PRef#:A063-POF  
Date:08/25/2009-Print Batch ID:9312  
PIN/Tax ID #: 14-33-324-044-0000  
Property Address:  
1720 N SEDGWICK ST  
CHICAGO, IL 60614

This Space for Recorder's Use Only



**ASSIGNMENT OF MORTGAGE**

**FOR GOOD AND VALUABLE CONSIDERATION**, the receipt and sufficiency of which is hereby acknowledged, **GMAC MORTGAGE, LLC**, whose address is 1100 Virginia Drive, Ft. Washington, PA 19034 does by these presents hereby grant, bargain, sell, assign, transfer, convey, set over and deliver unto **LaSalle Bank National Association**, as Trustee for Morgan Stanley Mortgage Loan Trust 2006-16AX, whose address is 4708 Mercantile Drive N Fort Worth, TX 76137, the following described mortgage, securing the payment of a certain promissory note(s) for the sum listed below, together with all rights therein and thereto, all liens created or secured thereby, all obligations therein described, the money due and to become due thereon with interest, and all rights accrued or to accrue under such mortgage.

Original Mortgagor(s): N/A

Original Mortgagee: **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC IS A SEPERATE CORPORATION THAT IS ACTING SOLELY AS A NOMINEE FOR HLB MORTGAGE SUCCESSORS AND ASSIGNS**

Date of Mortgage: 07/28/2006

Loan Amount: \$583,100.00

Recording Date: 08/18/2006 Book: NA Page: NA Document #: 0622826139

Legal Description: **NEED LEGAL**

and recorded in the official records of the County of Adams, State of Illinois affecting Real Property and more particularly described on said Mortgage referred to herein.

**IN WITNESS WHEREOF**, the undersigned has caused these presents to be executed on this date of 11/23/2009.

**GMAC MORTGAGE, LLC**

Jeffrey Stephan  
Limited Signing Officer

John Kerr, Limited Signing Officer

Record and Return To:  
Pierce and Associates  
1 N. Dearborn ST. F113  
Chicago, IL 60602-4321  
PB# 0715886

MMS

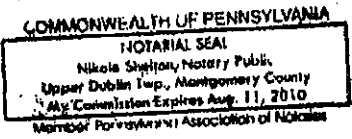


State of ~~TX~~ PA  
County of ~~Tarrant~~ Montgomery

On this date of 11/25/2009, before me, the undersigned authority, a Notary Public duly commissioned, qualified and acting within and for the aforementioned State and County, personally appeared the within named Jeffrey Stephan and [unclear], known to me (or identified to me on the basis of satisfactory evidence) that they are the L.S.O and L.S.D. respectively of GMAC MORTGAGE, LLC, and were duly authorized in their respective capacities to execute the foregoing instrument for and in the name and in behalf of said corporation and that said corporation executed the same, and further stated and acknowledged that they had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

Witness my hand and official seal on the date hereinabove set forth.

Nicole Shelton November 25, 2009  
Notary Public:



MMS

EXHIBIT "A": LEGAL DESCRIPTION

THE EAST 66 FEET OF LOT 8 IN C.J. HULLS SUBDIVISION OF BLOCK  
51 IN CANAL TRUSTEE'S SUBDIVISION OF SECTION 33, TOWNSHIP 40  
NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN  
COOK COUNTY, ILLINOIS.

TAX NO. 14-33-324-044-0000

Commonly known as:

1720 NORTH SEDGWICK STREET  
CHICAGO, IL 60614

PIERCE ASSOCIATES  
Attorneys for Plaintiff  
Thirteenth Floor  
1 North Dearborn  
Chicago, Illinois 60602  
PA0715886

CHANCERY DIVISION, COUNTY BUREAU

MOTION SLIP

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2011 JUN -6 PM 3:13

COURT OF ILLINOIS  
CHANCERY DIV.

DOROTHY PERWÉ CLERK

CASE # 070429730

CALENDAR: \_\_\_\_\_

ATTORNEY CODE: 33013

MOTION FOR:  PLAINTIFF  DEFENDANT

DATE REQUESTING: ASAP

CALL TIME: \_\_\_\_\_ A.M./P.M.

CONTESTED:  NOT CONTESTED: \_\_\_\_\_

PLAINTIFF'S NAME: BMC

DEFENDANT'S NAME: DANIEL GELIS RICKERT

ATTORNEY'S NAME

FIRM NAME

ANDJELKO GALIC

TELEPHONE 312 986-1510

PLEASE CHECK BOX ON THE REVERSE SIDE OF THIS FORM FOR THE TYPE OF MOTION

CHANCERY DIVISION, COUNTY BUREAU

SPINDLED MOTION FORM

- |  |   |
|--|---|
| <input type="checkbox"/> 1501 ADD ADDTL PARTY                  | <input type="checkbox"/> 1533 LIFT STAY                 |
| <input type="checkbox"/> 1502 ALTERNATIVE SERVICE              | <input type="checkbox"/> 1534 MISC. MOTION              |
| <input type="checkbox"/> 1503 AMEND ORDER                      | <input type="checkbox"/> 1535 SUBST. OF JUSTICE         |
| <input type="checkbox"/> 1504 APPT. COMMISSIONER               | <input type="checkbox"/> 1536 PLACE MORT. IN POSSESSION |
| <input type="checkbox"/> 1505 APPT. RECEIVER                   | <input type="checkbox"/> 1537 PRELIMINARY INJUNCTION    |
| <input type="checkbox"/> 1506 APPT. SELLING OFFICER            | <input type="checkbox"/> 1538 PROTECTIVE ORDER          |
| <input type="checkbox"/> 1507 APPROVE RECEIVER RPT.            | <input type="checkbox"/> 1539 PROVE-UP                  |
| <input type="checkbox"/> 1508 APPROVE SALE                     | <input type="checkbox"/> 1540 QUASH                     |
| <input type="checkbox"/> 1509 CERTIFY CLASS                    | <input type="checkbox"/> 1541 RECONSIDER                |
| <input type="checkbox"/> 1511 CHANGE OF VENUE                  | <input type="checkbox"/> 1542 RELEASE SURPLUS           |
| <input type="checkbox"/> 1512 CITATION-DISCOVER ASSETS         | <input type="checkbox"/> 1543 RESET BRIEFING SCHEDULE   |
| <input type="checkbox"/> 1513 COMPEL DISCOVERY                 | <input type="checkbox"/> 1544 RULE TO SHOW CAUSE        |
| <input type="checkbox"/> 1514 CONSOLIDATE                      | <input type="checkbox"/> 1545 SANCTIONS                 |
| <input type="checkbox"/> 1515 CONTINUE HEARING                 | <input type="checkbox"/> 1546 SET APPEAL BOND           |
| <input type="checkbox"/> 1516 DEFAULT                          | <input type="checkbox"/> 1547 SET BOND                  |
| <input type="checkbox"/> 1517 DEPOSIT FUNDS                    | <input type="checkbox"/> 1548 SET BRIEFING SCHEDULE     |
| <input type="checkbox"/> 1518 DISPURSE FUNDS                   | <input type="checkbox"/> 1549 SET CASE MGMT CONFER.     |
| <input type="checkbox"/> 1519 DISCHARGE RECEIVER               | <input type="checkbox"/> 1550 PRETRIAL SETTLEMENT CONF. |
| <input type="checkbox"/> 1520 DISCOVERY SANCTIONS              | <input type="checkbox"/> 1551 SPECIAL PROCESS SERVER    |
| <input type="checkbox"/> 1521 DISMISS                          | <input type="checkbox"/> 1552 STAY ADMINSTRA. ORDER     |
| <input type="checkbox"/> 1522 DISMISS PARTY                    | <input type="checkbox"/> 1553 STAY DISCOVERY            |
| <input type="checkbox"/> 1523 EXTEND DISCOVERY DATE            | <input type="checkbox"/> 1554 STAY SALE                 |
| <input type="checkbox"/> 1524 EXTENDED POSSESSION              | <input type="checkbox"/> 1555 STRIKE PLEADING           |
| <input type="checkbox"/> 1525 EXTEND TIME FOR FILING           | <input type="checkbox"/> 1556 SUBSTITUTE ATTORNEY       |
| <input type="checkbox"/> 1526 FILE AMENDED PLEADINGS           | <input type="checkbox"/> 1557 SUMMARY JUDGEMENT         |
| <input type="checkbox"/> 1527 GOOD FAITH FINDING               | <input type="checkbox"/> 1558 SUPPLEMENTAL DISCOVERY    |
| <input type="checkbox"/> 1528 INTERLOCUTORY APPEAL             | <input type="checkbox"/> 1559 TEMP. RESTRAINING ORDER   |
| <input type="checkbox"/> 1529 INTERVENE                        | <input type="checkbox"/> 1560 TRANSFER                  |
| <input type="checkbox"/> 1530 ISSUE JUDICIAL DEED              | <input type="checkbox"/> 1561 CAVATE DWP                |
| <input type="checkbox"/> 1531 JUDGEMENT OF FORCLOSURE AND SALE | <input type="checkbox"/> 1562 VACATE ORDER              |
| <input type="checkbox"/> 1532 FILE APPEARANCE AND PLEADING     | <input type="checkbox"/> 1563 VACATE SALE               |
|  | <input type="checkbox"/> 1564 WITHDRAW                  |

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
CHANCERY DEPARTMENT, FIRST DIVISION

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GMAC Mortgage, LLC. )  
 )  
Plaintiff/Counter-Defendant, )  
 )  
vs. )  
 )  
Richard Daniggelis, )  
 )  
Defendant/Counter-claimant )  
and cross-claimant )

CIRCUIT COURT OF COOK  
COUNTY, ILLINOIS  
CHANCERY DIV.

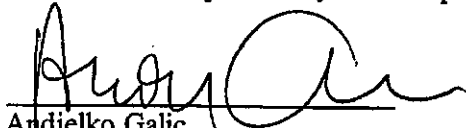
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DOROTHY BRADY CLERK

07 CH 29738

**NOTICE OF MOTION**

To: See attached Service list

YOU ARE HEREBY NOTIFIED that on June <sup>15<sup>th</sup></sup>, 2011, at 3 a.m. (p.m.), or as soon thereafter as Counsel may be heard, I shall appear before the Honorable Judge Mathias William Delort in Courtroom 2803, at the Richard J. Daley Center, Chicago, Illinois or any other Judge as may be holding Court in his absence, and then and there present the attached Motions to Strike and Dismiss Counts I and II of Plaintiff's Second Amended Complaint, at which time and place you may appear if you see fit so to do. Copies of these motions were previously served upon you.

  
Andjelko Galic  
Attorney at Law  
134 North LaSalle St., Suite 1810  
Chicago, IL 60602  
Attorney No.: 33013

**PROOF OF SERVICE**

I, Andjelko Galic, an attorney, certify that I served this Notice of Motion by mailing a copy to the above party at the above listed address by depositing same in the U.S. mail at 134 N. LaSalle, Illinois before the hour of 5:00 P.M. on June 7, 2011 with proper postage prepaid.

  
Andjelko Galic

Clerk's Office  
Appellate Court First District  
State of Illinois  
160 N. LaSalle  
Suite 1400  
Chicago, IL 60601

06/20/11

Honorable Dorothy Brown  
Richard J. Daley Center  
Room 1001  
Chicago, IL 60602

Re: Bank of America v. Daniggelis, Richard  
Appellate Court No. 1-10-3100  
Trial Court No. 07CH29738

Dear Honorable Brown:

Attached is the Mandate of the Appellate Court in the above  
entitled cause.

We are sending the attorneys of record a copy of this letter to  
inform them that the mandate of the Appellate Court has been filed  
with you.

Steven M. Ravid  
Clerk of the Appellate Court  
First District, Illinois

Attachment

cc: All attorneys of record

DOROTHY BROWN  
CLERK

CIVIL APPEALS DIVISION

11 JUN 20 PM 3:38

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1-10-3100

IN THE APPELLATE COURT, STATE OF ILLINOIS  
FIRST DISTRICT, THIRD DIVISION

BANK OF AMERICA, JOHN LAROCQUE,	) Appeal from the
Plaintiff-Appellee,	) Circuit Court of
v.	) Cook County
RICHARD DANIGGELIS,	)
Defendant-Appellant.	) Trial Court No. 07CH29738
	)
	) Honorable
	) Mathias W. Delort
	) Judge Presiding

ORDER

This cause having come before the Court on the Court's own motion, the Court finding that the appellant has failed to file the Record on appeal within the time prescribed by Supreme Court Rule 326;

It is hereby ordered that this case is DISMISSED FOR WANT OF PROSECUTION.

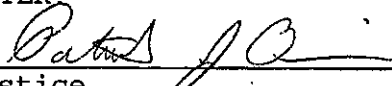
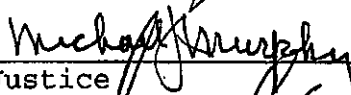
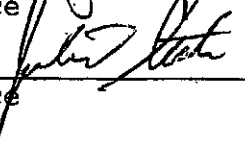
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 CIVIL APPEALS DIVISION  
 DOROTHY BROWN  
 CLERK

ORDER ENTERED

APR 26 2011

APPELLATE COURT, FIRST DISTRICT

ENTER:

  
 \_\_\_\_\_  
 Justice  
  
 \_\_\_\_\_  
 Justice  
  
 \_\_\_\_\_  
 Justice

STEVEN M. RAVID, CLERK OF THE APPELLATE COURT, FIRST DISTRICT

Richard Daniggelis  
REG NO:  
1720 N. Sedgwick St.  
Chicago, IL 60614

IN THE APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

Patrick J. Quinn, Justice

Michael J. Murphy, Justice

Honorable John O. Steele, Justice

Steven M. Ravid

Thomas J. Dart, Sheriff

On the Twenty-sixth day of April, 2011, the Appellate Court, First District, issued the following judgment:

No. 1-10-3100

BANK OF AMERICA, JOHN LAROCQUE,  
Plaintiff-Appellee,

v.

RICHARD DANIGGELIS,  
Defendant-Appellant.

Appeal from Cook County  
Circuit Court No. 07CH29738

As Clerk of the Appellate Court, in and for the First District of the State of Illinois, and the keeper of the Records, Files and Seal thereof, I certify that the foregoing is a true copy of the final order of said Appellate Court in the above entitled cause of record in my office.

IN TESTIMONY WHEREOF, I have set my hand and affixed the seal of said Appellate Court, at, this Twentieth day of June, 2011.

*Steven M. Ravid*  
Clerk of the Appellate Court  
First District, Illinois



MARGRITH PROWM  
CLERK

CIVIL APPEALS DIVISION

11 JUN 20 PM 3:38

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FILED - 5

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

CIRCUIT COURT OF COOK  
COUNTY, ILLINOIS  
CHANCERY DIV.

GMAC Mortgage LLC n/k/a Bank Of America, N.A.,  
as trustee for Morgan Stanley Loan Trust 2006-16AX,  
Plaintiff/Counter-Defendant,

CLERK  
DO NOT WRITE

vs.

No.: 07 CH 29738

RICHARD DANIGGELIS,  
Defendant/Counter-claimant and  
Cross-claimant,

Joseph Younes, Mortgage Electronic Registration Systems,  
Inc., as nominee for HLB Mortgage, Unknown Heirs and  
legatees of Joseph Younes and unknown owners,  
Defendants/Cross-Defendants,

Paul Shelton, Erika Rhone and Stewart Title of Illinois,  
Respondents in Discovery.

RICHARD DANIGGELIS' REPLY TO THE RESPONSE FILED BY BANK OF  
AMERICA TO HIS MOTIONS TO STRIKE AND DISMISS COUNT II OF  
PLAINTIFFS SECOND AMENDED COMPLAINT PURSUANT TO SECTIONS  
735 ILCS 5/2-615 and 735 ILCS 5/2-619

The Defendant, RICHARD DANIGGELIS, by and through his attorney Andjelko Galic and submits the following Reply to the Response that was filed by BANK OF AMERICA to his motions to Strike and Dismiss Count II of Plaintiff's Second Amended Complaint.

PROCEDURAL BACKGROUND

1. On June 15, 2011 Richard Daniggelis presented his Combined Motions to Strike and Dismiss Plaintiff's Second Amended Complaint. Plaintiff's Second Amended Complaint consists of two counts. Count I of Richard's Combined Motions was directed against Count I of Plaintiff's Second Amended Complaint and the motion was based on defective mortgage assignment from GAMA to LaSalle Bank National Association.
2. Count I of Plaintiff's Second Amended Complaint is a foreclosure complaint directed against Joseph Younes and several other defendants.

3. Count II (a 2-615 motion) and Count III (a 2-619 motion) of Richard Daniggelis' Combined Motions are directed against Count II of the Second Amended Complaint. Count II of Plaintiff's Second Amended Complaint is an attempt to state a cause of action based on subrogation and it is directed against Joseph Younes and against Richard Daniggelis.
4. On June 15, 2011 BANK OF AMERICA faced with Richard's 2-615 Motion to Strike Count I of the Second Amended Complaint requested time to amend Count I of its Second Amended Complaint rendering Richard's 2-615 Motion to Strike Count I moot. BANK OF AMERICA was granted 28 days to amend but it failed to amend Count I of its Second Amended Complaint within the time specified in the June 15, 2011 order and instead, it has filed a motion seeking additional time to do so. Plaintiff's Motion for extension of time fails to allege any specific factual basis for the motion.
5. On July 13, 2011 BANK OF AMERICA, filed its timely Response to Richard's Daniggelis' Combined Motions to Strike and Dismiss Count II of the Second Amended Complaint.

#### DANIGGELIS' 5/2-615 MOTION TO STRIKE

6. As indicated above, in Count II of the Second Amended Complaint BANK OF AMERICA is attempting to state a cause of action based on subrogation. Richard Daniggelis' 2-615 Motion to Strike Count II of the Second Amended Complaint is based on Section 735 ILCS 5/2-403(c).
7. In its Response to Richard Daniggelis' Motion to Strike Count II BANK OF AMERICA, without citing any authority for its position, simply asserts that Section 735 ILCS 5/2-403(c) is not applicable in this case because "Count II of the Complaint is based upon the doctrine of 'equitable subrogation', not section 2-403(c) which are mutually exclusive." See paragraph 24 and 29 of Plaintiff's Response.
8. Plaintiff's Response here simply ignores the plain language of Section 735 ILCS 5/2-403(c).
9. As indicated in Richard Daniggelis' 615 Motion to Strike Count II of Plaintiff's Second Amended Complaint, in its relevant part Section 735 ILCS 5/2-403(c) states as follows:

**Sec. 2-403 (c) Any action hereafter brought by virtue of the subrogation provision of any contract or by virtue of subrogation by operation of law shall be brought either in the name or for the use of the subrogee; and the subrogee shall in his or her pleading on oath, or by his or her affidavit**

if pleading is not required, allege that he or she is the actual bona fide subrogee and set forth how and when he or she became subrogee. (Source: P.A. 83-707.) Emphasis added.

10. In its Response to Richard Daniggelis' Motion to Strike Count II Plaintiff misunderstands the distinction between equitable subrogation and contractual subrogation, relies on cases (paragraphs 14 – 20 of Plaintiff's Response) which are both factually and legally distinguishable, and relies on generalized maxims inapplicable to equitable subrogation. In all cases cited in Plaintiff's Response in support of Plaintiff's definition of 'equitable subrogation' there is a question of priority between two liens attached to the mortgaged property, and the lien holders who prevailed with their priority claims are those lien holders who placed their liens against the property with the explicit (conventional subrogation) and/or implied (equitable subrogation) consent of the legitimate mortgagor, the owner of the property. At bar there is no question of priority between any liens and Plaintiff's "lien" was placed against Defendant's property by a complete stranger, without Defendant's knowledge and/or consent.
11. In its Response Plaintiff does not cite any authority, because there is none, for his proposition that a complete stranger who placed a mortgage against someone's property without the knowledge and consent of the actual owner of the property, could somehow through equity accomplish the illegal objective he attempted to accomplish through a fraudulent conveyance. Plaintiff's "interpretation" of the applicable statute and the case law, thus, renders the concept of "equitable subrogation" absurd and this court should not tolerate this kind of experimenting with innocent foreclosure-rescue-fraud victims, and especially so where, as in case at bar, Plaintiff has numerous other legal remedies for purposes of recovering its loses, if any.
12. There are only two kinds of subrogation: (a) by virtue of the subrogation provision of any contract (contractual subrogation) or (b) by virtue of subrogation by operation of law and not by contract, that is, equitable subrogation. See *Schultz v. Gotlund*, 138 Ill. 2d 171, 173 (1990). See also *In re Pearce*, 236 B.R. 261, 264-65 (Bankr.S.D.Ill. 1999) for a detailed analysis of the Illinois law on this issue.
13. Since conventional and equitable subrogation are both encompassed by the plain language of Section 735 ILCS 5/2-403(c) it is clear that Plaintiff's argument here has no merit, and that Defendant's Motion to Strike Count II, thus, must be granted insofar as Count II of the Second Amended Complaint is directed against Defendant Richard Daniggelis.
14. In paragraph number 24 of the Plaintiff's Response it is alleged that: To state a cause of action for equitable subrogation, Illinois law does not require BANK OF AMERICA to allege that Daniggelis has a 'legal obligation' to pay BANK OF AMERICA." In his 2-615 Motion to Strike Count II Defendant never alleged that Plaintiff has to plead that "Daniggelis has a 'legal obligation' to pay BANK OF

AMERICA”, and consequently it is not clear for what purpose is Plaintiff bringing up and then refuting this claim.

15. In paragraph number 5 of Defendant's Motion to Strike Count II of Plaintiff's Second Amended Complaint Defendant specifically indicated that in its Second Amended Complaint Plaintiff failed to allege any facts indicating that Plaintiff had a legal obligation to pay the claim of Deutsch Bank and Trust, in other words that the Plaintiff in this case is a complete stranger in relation to Richard Daniggelis, and thus, that there is no set of facts as alleged in Count II of Plaintiff's Second Amended Complaint under which Plaintiff could state any claim against Richard Daniggelis, equitable or otherwise.
16. In paragraph number 26 of its Response Plaintiff is charging Defendant with misquoting the law on equitable subrogation. While it is true that National Union Insurance co. V. Dowd and Dowd PC. 2 F. Supp.2d 1013 N.D.Ill.1998 involves an insurance policy and not a mortgage, this case accurately states the legal requirements for equitable subrogation in Illinois.
17. It is well settled law in Illinois that prior to stepping into the shoes of the one whose claim of debt has been paid, one who has paid another's debt or who has indemnified another must have had a legal obligation to do so prior to making the payment. See *In re Marriage of Milliken*, 199 Ill. App. 3d 813, 145 Ill. Dec. 821, 557 N.E. 2d 591 (1<sup>st</sup> Dist. 1990). "The voluntary assumption of the payment of a debt, irrespective of the motive of the payor, does not confer upon the payor the status of subrogee". *Id.*
18. Something more than a mere payment of a debt is required to entitle the payor to be substituted in the place of the original creditor, since subrogation goes on the theory that the one invoking the remedy rightfully discharged the debt. See *Matter of Estate of Winstead*, 144 Ill. App. 3d 502, 98 Ill. Dec. 162, 493 N.E.2d 1183 (4<sup>th</sup> Dist. 1986).
19. Accordingly, a mere stranger or volunteer cannot, by paying debt for which another is bound, be subrogated to the creditor's rights in respect of the security given by the real debtor, when he or she pays without an assignment of the debt or an agreement for subrogation. See *Lake View Trust & Savings Bank v. Rice*, 279 Ill. App. 538, 1935 WL 3553 (1<sup>st</sup> Dist. 1935); *Thorp v. Board of Ed. Of City of Chicago*, 404 Ill. 588, 90 N.E.2d 71 (1950).
20. It is precisely because of these necessary elements of a cause of action based on subrogation that a plaintiff wishing to proceed on theory of equitable subrogation must comply with requirement of Section 735 ILCS 5/2 403(c) otherwise anybody who made any payment on behalf of someone else, including the payments made in furtherance of fraudulent conveyances, could later come to court and demand repayment on theory of equitable subrogation.

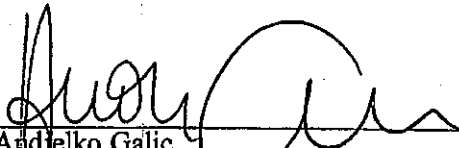
21. In its Response to Defendant's 2-615 Motion to Strike (See paragraph number 30 of Plaintiff's Response) Plaintiff is simply ignoring this well established principle that in Illinois "subrogation is limited to cases where the person making the payment stands in such relation to the premises or parties that his rights can only be fully protected by regarding the transaction as an assignment of the mortgage. Such relations must exist that the payment is to be regarded as by or on behalf of a person who had some interest in the premises or some claim against other parties which he is entitled in equity to have protected, and a mere stranger who pays off a mortgage can never be an equitable assignee." See *Thompson v. Davis* 297 Ill. 11, 130 N.E. 455, 457.
22. To avoid being a mere volunteer, the party seeking subrogation must have made payment in order to fulfill a legal or equitable duty owed to the subrogor. See *Labella Winnetka, Inc., vs. General Casualty Insurance Company*, 692 F.2d at 460. Plaintiff claims that the subrogor in this case is Deutsch Bank and Trust but fails to allege that it had any legal obligation to make any payment to Deutsch Bank and Trust.
23. A motion to strike pursuant to Section 5/2-615 challenges the legal sufficiency of the complaint; the relevant inquiry is whether sufficient facts are contained in the pleading which, if proved, would entitle the plaintiff to relief. *Chicago City Day School v. Wade*, 297 Ill. App. 3d 465, 469 (1998). Consequently, for purposes of adjudicating Defendant's Motion to Strike Count II of Plaintiff's Second Amended Complaint this court must disregard all allegations that are not contained in Count II of the Second Amended Complaint and all arguments raised in Plaintiff's Response that are based on allegations that are not contained in Count II of Plaintiff's Second Amended Complaint.
24. For all of the above reasons Defendant's 735 ILCS 5/2-615 Motion to Strike Count II of Plaintiff's Second Amended Complaint, as directed against Richard Daniggelis, must be granted and Count II of Plaintiff's Second Amended Complaint must be stricken.

#### DANIGGELIS' 5/2-619 MOTION TO DISMISS

25. In his Response to Defendant's Motion to Dismiss Count II of Plaintiff's Second Amended Complaint pursuant to Section 735 ILCS 5/2-619 Plaintiff fails to directly address the argument raised in Defendant's 5/2-619 Motion to Dismiss.
24. Paragraph 37 of Plaintiff's Response is incoherent and, in any case, it does not in any obvious way indicate Plaintiff's position regarding the Defendant's argument for dismissal of this Count pursuant to Section 5/2-619.
25. Similarly, paragraphs number 38, 39 and 40 of Plaintiff's Response fail to address the Illinois Statute of Frauds.

26. In paragraph number 41 Plaintiff states that "Daniggelis' statute of frauds argument falls flat in light of the mortgage recorded on his property by Deutsch Bank which BOA now holds." This factual allegation about Plaintiff's holding the Deutsch Bank mortgage executed by the Defendant, cannot be found in any pleadings, and if true, the assignment of this mortgage should have been attached to the Plaintiff's Second Amended Complaint pursuant to Section 735 ILCS 5/2-606 which provides that "if a claim or defense is founded upon a written instrument, a copy thereof, or of so much of same as is relevant, must be attached to the pleading as an exhibit or recited therein." 735 ILCS 5/2-606 (West 2006).
27. Based on what has been submitted in Plaintiff's Response as Argument (paragraphs 42 - 46) one cannot determine what arguments, if any, Plaintiff is advancing in opposition to Defendant's claim that Count II of the Second Amended Complaint should be dismissed with prejudice for its failure to comply with the Illinois Statute of Frauds, and Defendant does not wish to engage in any speculation as to what Plaintiff may be saying in its largely incoherent Response to Defendant's Motion to Dismiss pursuant to Section 735 ILCS 5/2-619(a)(7).

Wherefore, Defendant Richard Daniggelis prays for an order dismissing Count II of Plaintiff's Second Amended Complaint with prejudice pursuant to 735 ILCS 5/2-619(a)(7).



Andjelko Galic  
Attorney for Richard Daniggelis

Law Offices of Andjelko Galic  
134 N. LaSalle Street  
Suite 1810  
Chicago, Illinois 60602  
Tel. (312) 986-1510  
Attorney No.: 33013

FILED - 5  
11 JUL 27 PM 3:03

SUPREME COURT OF COOK  
COUNTY, ILLINOIS  
CHANCERY DIV.

DOROTHY BROWN CLERK

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

2011 OCT 21 PM 5:22

GMAC Mortgage LLC n/k/a Bank Of America, N.A.,  
As trustee for Morgan Stanley Loan Trust 2006-16AX,  
Plaintiff/Counter-Defendant,

CIRCUIT COURT OF COOK  
COUNTY, ILLINOIS  
CHANCERY DIV.

vs.

DOROTHY ENO, CLERK  
No. 07 CH 29738

RICHARD DANIGGELIS,  
Defendant/Counter-claimant and  
Cross-claimant,

Joseph Younes, Mortgage Electronic Registration Systems,  
Inc., as nominee for HLB Mortgage, Unknown Heirs and  
legatees of Joseph Younes and unknown owners,  
Defendants/Cross-Defendants,

Paul Shelton, Erika Rhone and Stewart Title of Illinois,  
Respondents in Discovery.

MOTION FOR RULING ON PLAINTIFF'S OBJECTIONS  
TO DEFENDANT'S REQUEST TO PRODUCE

NOW COMES the Defendant, RICHARD DANIGGELIS, by and through his attorney Andjelko Galic and moves this Court for rulings on objections raised in Plaintiff's Answer to Defendant's Request to Produce. In support of his motion Richard Daniggelis states as follows:

1. On November 25, 2009 Plaintiff served Defendant with his Answer to Defendant's Rule 214 Request to Produce. See attached Exhibit "A".
2. In its Answer Plaintiff specifically objected to Defendant's Requests: 2, 6, and 8.
3. Defendant's Request number 2 was asking for production of documents concerning or relating to the securitization of Joseph Younes' loans including but not limited to the following:

"(a) the applicable Pooling and Servicing Agreement, along with any exhibits and attachments;

(b) any and all assignments, recorded or unrecorded,



(c) original copies of the loan document (e.g. Note) executed by Joseph Younes, together with any endorsements and/or allonges; and

(d) any power of attorney relied on by YOU to transfer or assign your loan or loan documents.”

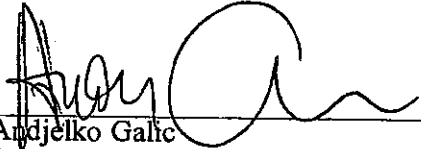
4. In its Answer to the Defendant's Request to Produce Plaintiff objected to Defendant's Request number 2 indicating that "this request is too broad and requests irrelevant materials i.e., pooling and servicing agreement; without waiving this objection see bates stamped documents 1-16 and 30-194.
5. The documents produced by the Plaintiff (bates stamped documents 1-16 and 30-194) do not include a copy of the applicable Pooling and Servicing Agreement nor any exhibits and attachments to the Pooling and Servicing Agreement for Morgan Stanley Loan Trust 2006-16AX.
6. In addition, the documents produced by the Plaintiff do not include original copies of the loan document (e.g. Note) executed by Joseph Younes, together with any endorsements and/or allonges.
7. Moreover, the documents produced by the Plaintiff do not include any copies of any power of attorney relied on by Plaintiff to transfer or assign this loan or loan documents.
8. Plaintiff's objection based on relevance of the requested documents is without any merit whatsoever because the requested documents would conclusively show whether the Plaintiff is a party in interest and the requested documents would also conclusively show the chain of title for this mortgage and/or the note.
9. Plaintiff's baseless objection and refusal to produce these documents is particularly troubling under the facts of this case. Plaintiff's original complaint filed in 2007 was based on a fraudulent Lost Assignment Affidavit purporting to be executed by certain infamous fictional character, Linda Green, the "Vice President On Behalf of Saxon Mortgage Servicing, Inc." In this 'Lost Assignment Affidavit' without any specific reference to any specific dates of the alleged assignment it is alleged that "the assignment from GMAC Mortgage, LLC to LaSalle Bank National Association, as Trustee for Morgan Stanley Mortgage Loan Trust 2006-16AX was lost prior to recording..." See attached Exhibit "B".
10. Since the "Lost Assignment Affidavit" was attached to the Plaintiff's original complaint that was filed in October of 2007, by submission of this "Lost Assignment Affidavit" this Court and the Defendants are misled to believe that the assignment of the mortgage form GMAC to LaSalle Bank National Association took place prior to the filing of the original complaint in this case.
11. However, there is another Assignment of Mortgage from GMAC Mortgage, LLC to LaSalle Bank National Association, as Trustee for Morgan Stanley Mortgage Loan Trust



2006-16AX dated either November 23, 2009 or November 25, 2009, more than two years after Plaintiff initiated this foreclosure action as Trustee for Morgan Stanley Mortgage Loan Trust 2006-16AX. See attached Exhibit "C". It is this "assignment" that the Plaintiff is trying "to correct" in its latest version of its complaint while still maintaining that "the November 2009 assignment", executed more than 2 years after Plaintiff filed its original foreclosure complaint, somehow authorized Plaintiff to file its foreclosure action against Defendants in October of 2007.

12. Morgan Stanley Mortgage Loan Trust 2006-16AX was established under the laws of the State of New York and under the New York law in order to place a property in a trust the property must be placed in that trust by a certain date and in compliance with the applicable instructions provided in the Pooling and Servicing Agreement establishing that particular trust. The Pooling and Servicing Agreement for Morgan Stanley Mortgage Loan Trust 2006-16AX is thus of vital importance.
13. Given the above facts of this case it is apparent that Plaintiff's objection to Defendant's Request to Produce documents identified in Defendant's Request number 2 has no merit and that it must be overruled.
14. Defendant's Request number 6 was requiring Plaintiff to produce documents memorializing any conversation between Plaintiff and MERS, HLB Mortgage, Joseph Younes, Stewart Title of Illinois, Richard Daniggelis or the mortgage broker and all other parties to this suit relating to the subject mortgage and the subject matter of this case."
15. Plaintiff's relevance objection to Defendant's request number 6 is not well taken. While the Plaintiff may not be the originator of the loan the Plaintiff, being a trustee for the Morgan Stanley Mortgage Loan Trust 2006-16AX is likely to have requested documents because Pooling and Servicing Agreements generally require the parties establishing a trust like this one to turn over the original files to the Trustee by a certain date. Consequently Defendant's request number 6 was reasonably calculated to lead to discoverable information and Plaintiff's objection to this request must be overruled.
16. Defendant's Request number 8 was seeking copies of any and all payments made on the subject mortgage to date and a statement of the current outstanding balance.
17. Plaintiff's general objection based on the fact that Plaintiff did not originate the loan misses the mark. Plaintiff is seeking to foreclose and thus Plaintiff must prove the current outstanding balance. Who originated this loan has nothing to do with calculating the current outstanding balance and thus Plaintiff's objection to Defendant's Request number 8 must also be overruled.

Wherefore Defendant, Richard Daniggelis prays for an order overruling Plaintiff's objections to Defendant's Requests 2, 6 and 8 and ordering Plaintiff to produce requested documents within 21 days together with an affidavit pursuant to Supreme Court Rule 214 regarding the completeness of Plaintiff's Answer to Defendant's Request to Produce.

  
\_\_\_\_\_  
Andjelko Galic  
Attorney for Defendant

Law Offices of Andjelko Galic  
134 N. LaSalle Street  
Suite 1810  
Chicago, Illinois 60602  
Tel. (312) 986-1510  
Attorney No.: 33013

Exhibit "A"

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
CHANCERY DEPARTMENT, FIRST DISTRICT

LaSalle Bank National Association as trustee for	)	
Morgan Stanley Loan Trust 2006-16AX	)	Case No. 07 CH 29738
Plaintiff/Counter-Defendant,	)	
v.	)	
Richard Daniggelis,	)	Cal: 57
Defendant/Counter-claimant and cross-claimant,	)	
<hr/>		
Joseph Younes, Mortgage Electronic Registration	)	
Systems, Inc., as nominee for HLB Mortgage, Unknown	)	
Heirs and legatees of Joseph Younes and unknown owners,	)	
Defendants/Cross-Defendants,	)	
	)	
Paul Shelton, Erika Rhone and Stewart Title of Illinois,	)	
Respondents in discovery.	)	

**LASALLE BANK'S ANSWER TO 214 REQUEST TO PRODUCE**

Plaintiff/Counter-Defendant, Bank of America, N.A., as trustee and successor in interest to LaSalle Bank National Association as Trustee for Morgan Stanley Loan Trust 2006-16AX previously named herein as GMAC Mortgage, LLC (herein "Plaintiff" or "LaSalle") by and through one of its attorneys Richard Indyke hereby answers to 214 Request to Produce propounded by Defendant/Counter-Plaintiff Richard Daniggelis (herein "Defendant") as follows:

**GENERAL OBJECTIONS**

Plaintiff objects to this request as overly broad and unduly burdensome to the extent it requests "all documents". Plaintiff objects to this request as vague and indefinite because of the phrase "retrievable" is not reasonably susceptible to precise definition. In addition, Plaintiff objects to this request as overly broad for encompassing documents that are not relevant to any claim and defense in this action.

LaSalle was not the originator of the subject loan and objects to this request as it is overly broad and not relevant to any claim or defense in this action.

Subject to and without waiving any objections stated, Plaintiff will produce reasonably responsive documents for this transaction.

**ANSWERS**

1. All documents relating to Joseph Younes, or which are indexed, filed or retrievable under Younes' name or any number, symbol, designation or code (such as an account number or social security number) assigned to Joseph Younes.

**ANSWER:** See bates stamped documents 1-16 and 30-194 attached. Objection as to Younes' social security number.

2. All documents concerning or relating to the securitization of Joseph Younes's loans, including but not limited to the following: (a) the applicable Pooling and Servicing Agreement, along with any exhibits and attachments; (b) any and all assignments, recorded or unrecorded, (c) original copies of the loan document (e.g. Note) executed by Joseph Younes, together with any endorsements and/or allonges; and (d) any power of attorney relied on by YOU to transfer or assign YOUR loan or loan documents.

**ANSWER:** Objection, this request is too broad and requests irrelevant material i.e, pooling and servicing agreement; without waiving this objection see bates stamped documents 1-16 and 30-194.

3. Any and all evidence of YOUR payment of any amounts to MERS or HLB Mortgage in connection with the subject loans, including but not limited to, the fronts and backs of each check, receipts of wire transfers, invoices or billing statements, etc.

**ANSWER:** Objection, not relevant. LaSalle did not make a payment to HLB. The assignment documents attached reflect consideration for the loan assigned.

4. Any documents related to title insurance issued for the subject transaction.

**ANSWER:** See bates stamped documents 140-154 attached.

5. All documents related to or used in the preparation, signing and closing of the subject mortgage.

**ANSWER:** Objection, LaSalle did not originate the loan. See bates stamped documents 1-16 and 30-194 attached.

6. Any and all documents in the nature of correspondence or documents memorializing any conversation between you, MERS, HLB Mortgage, Joseph Younes, Stewart Title of Illinois, Richard Daniggelis or the mortgage broker, and all other parties to this suit relating to the subject mortgage and the subject matter of this case.

**ANSWER:** Objection, the request is too broad and unlimited in time, it is also irrelevant. LaSalle was not the originator of the loan.

7. All manuals, memoranda, instructions, guidelines, or other documents which discuss or describe the procedures, policies, or practices for your relationships with mortgage brokers.

**ANSWER:** Objection. LaSalle was not the originator of the loan, LaSalle's manuals, policies, instructions are protected by work product and do not relate to the Younes' loan.

LaSalle objects to request for "other documents" and this request covers an unlimited period of time.

8. Copies of any and all payments made on the subject mortgage to date and a statement of the current outstanding balance.

**ANSWER:** Objection, LaSalle did not originate the loan. See bates stamped documents 161-162 and mortgage attached. LaSalle does not have copies of payments (checks etc.) on the subject mortgage.

9. All other documents, not already produced in response to other requests, that you may use or intend to use at trial, hearing, and/or arbitration in this matter.

**ANSWER:** LaSalle has not determined which documents that were not already produced may be used at a trial, hearing and/or arbitration in this matter. Discovery has not been completed and Defendant is now just adding new parties.

Dated: November 25, 2009

Respectfully submitted,  
Plaintiff/Counter-Defendant, Bank of America, N.A.,  
as trustee and successor in interest to LaSalle Bank  
National Association as Trustee for Morgan Stanley  
Loan Trust 2006-16AX previously named herein as  
GMAC Mortgage, LLC



By: Richard Indyke, its attorney

Richard Indyke  
Attorney for Plaintiff  
221 North LaSalle Street, Suite 1200  
Chicago, Illinois 60601  
312-332-2828  
Atty No. 20584

PROOF OF SERVICE

Under penalties as provided by law, pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that a copy of the foregoing was served by First Class Mail to:

Benji Philips, Esq.  
Chicago Volunteer Legal Services Foundation  
100 N. LaSalle St., Suite 900  
Chicago, Illinois 60602

Craig Cronquist, Esq.  
Maloney & Craven, P.C.  
2093 Rand Road  
DesPlaines, Illinois 60016

Ms. Carrie A. Dolan, Esq.  
Cohon Raizes & Regal LLC  
208 S. LaSalle St., Suite 1860  
Chicago, Illinois 60604

Joseph J. Knopic II, Esq.  
Pierce and Associates  
1 N. Dearborn, Suite 1300  
Chicago, Illinois 60602

John K. Kallman, Esq.  
221 N. LaSalle St., Suite 1200  
Chicago, Illinois 60601

Charanne M. Papuga, Esq.  
Kropik, Papuga & Shaw  
120 S. LaSalle Street, Suite 1327  
Chicago, Illinois 60603

the above person(s) on the 25<sup>th</sup> day of November, 2009.

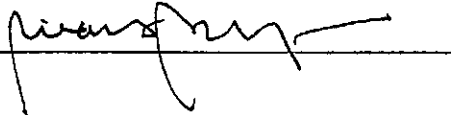
BY:  \_\_\_\_\_

Exhibit "B"

**Record and Return To:**  
**Pierce and Associates**  
**1 N. Dearborn ST. Fl.13**  
**Chicago, IL 60602-4321**  
PB# 0715886

Please Return To: DOCX  
1111 Alderman Dr.  
Suite 350  
Alpharetta, GA 30005

Please cross-reference to  
Mtg/DOT Recorded in  
Book N/A, Page N/A,  
Instr# 622826137  
Adams County, IL.

Project: A063  
Loan Number: 000- 58942520  
Re: 1720 N. Sedgwick St Chicago, IL 60614

## LOST ASSIGNMENT AFFIDAVIT

STATE OF GA  
COUNTY OF Fulton

Linda Green, Being Vice President On behalf of Saxon Mortgage Servicing, Inc being duly sworn, deposes and says that to his/her best knowledge and belief under the penalty of perjury:

1. I am the Vice President for Saxon Mortgage Servicing, Inc the duly appointed and acting serving entity on behalf of LaSalle Bank National Association, as Trustee for Morgan Stanley Mortgage Loan Trust 2006-16AX, the current holder of a certain note dated 7/28/2006, made by **Joseph Younes** to the order of **GMAC Mortgage LLC**,) in the principal sum of **\$583100**, together with interest at the rate of 8.75 percent (8.75%) per annum (hereinafter referred to as the "Note"). A copy of the Note is attached hereto as "Exhibit A".
2. The Note was secured by a Mortgage/Deed of Trust of same date made by Joseph Younes to GMAC Mortgage LLC, which Security Deed was recorded on 9/16/2006, in Book N/A, Page N/A, Instrument #622826137 in the office of recorder of AdamsCounty,IL.
3. **LaSalle Bank National Association, as Trustee for Morgan Stanley Mortgage Loan Trust 2006-16AX** is now the current and has been the holder of the Note and LaSalle Bank National Association, as Trustee for Morgan Stanley Mortgage Loan Trust 2006-16AX has been in physical possession of all associated loan records since the loan was transferred.
4. Based upon the information available to us, it appears the assignment of the Mortgage/Deed of Trust from **GMAC MORTGAGE, LLC** to **LaSalle Bank National Association, as Trustee for Morgan Stanley Mortgage Loan Trust 2006-16AX** was lost prior to recording when the loan was transferred

MMS

000159



from GMAC MORTGAGE, LLC to LaSalle Bank National Association, as Trustee for Morgan Stanley Mortgage Loan Trust 2006-16AX and it is not obtainable. LaSalle Bank National Association, as Trustee for Morgan Stanley Mortgage Loan Trust 2006-16AX is the assignee, holder and owner of the loan.

5.

Sworn to and subscribed before me this  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Deponent:

  
\_\_\_\_\_  
Name: Linda Green

\_\_\_\_\_  
Notary Public:

MMS

000160

Exhibit "C"

Document prepared By:  
Ron Meharg, 888-362-9638  
1111 Alderman Dr., Suite 350, Alpharetta,  
GA 30005



Doc#: 0934812119 Fee: \$40.00  
Eugene "Gene" Moore RHP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 12/14/2009 01:21 PM Pg: 1 of 3

DOCX  
1111 Alderman Dr., Suite 350  
Alpharetta, GA 30005

SAXCM	000	78549640
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Secondary Ref. #: 2000538996  
CRef#:09/09/2009-PRef#:A063-POF  
Date:08/25/2009-Print Batch ID:9312  
PIN/Tax ID #: 14-33-324-044-0000

Property Address:  
720 N SEDGWICK ST  
CHICAGO, IL 60614

This Space for Recorder's Use Only



**ASSIGNMENT OF MORTGAGE**

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, GMAC MORTGAGE, LLC, whose address is 1100 Virginia Drive, Ft. Washington, PA 19034 does by these presents hereby grant, bargain, sell, assign, transfer, convey, set over and deliver unto LaSalle Bank National Association, as Trustee for Morgan Stanley Mortgage Loan Trust 2006-16AX, whose address is 4708 Mercantile Drive N Fort Worth, TX 76137, the following described mortgage, securing the payment of a certain promissory note(s) for the sum listed below, together with all rights therein and thereto, all liens created or secured thereby, all obligations therein described, the money due and to become due thereon with interest, and all rights accrued or to accrue under such mortgage.

Original Mortgagor(s): N/A

Original Mortgagee: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC IS A SEPERATE CORPORATION THAT IS ACTING SOLELY AS A NOMINEE FOR HLB MORTGAGE SUCCESSORS AND ASSIGNS

Date of Mortgage: 07/28/2006

Loan Amount: \$583,100.00

Recording Date: 08/18/2006 Book: NA Page: NA Document #: 0622826139

Legal Description: NEED LEGAL

and recorded in the official records of the County of Adams, State of Illinois affecting Real Property and more particularly described on said Mortgage referred to herein.

IN WITNESS WHEREOF, the undersigned has caused these presents to be executed on this date of 11/23/2009.

GMAC MORTGAGE, LLC

Jeffrey Stephan  
Limited Signing Officer

John Kerr, Limited Signing Officer

Record and Return To:  
Pierce and Associates  
1 N. Dearborn ST. FI 13  
Chicago, IL 60602-4321  
PB# 0715886

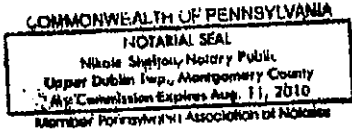
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State of ~~TX~~ <sup>PA</sup>  
County of ~~Tarrant~~ <sup>Montgomery</sup>

On this date of 11/25/2009, before me, the undersigned authority, a Notary Public duly commissioned, qualified and acting within and for the aforementioned State and County, personally appeared the within named Jeffrey Stephen and John [unclear], known to me (or identified to me on the basis of satisfactory evidence) that they are the L.S.O and L.S.O. respectively of GMAC MORTGAGE, LLC, and were duly authorized in their respective capacities to execute the foregoing instrument for and in the name and in behalf of said corporation and that said corporation executed the same, and further stated and acknowledged that they had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

Witness my hand and official seal on the date hereinabove set forth.

Nicole Sheehan November 25, 2009  
Notary Public:



MMS

FILED

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

U.S. Bank, N.A., as trustee for Morgan Stanley Loan  
Trust 2006-16AX,  
Plaintiff/Counter-Defendant,

CLERK  
JUDITH BROWN

vs.

No.: 07 CH 29738

RICHARD DANIGGELIS,  
Defendant/Counter-claimant and  
Cross-claimant,

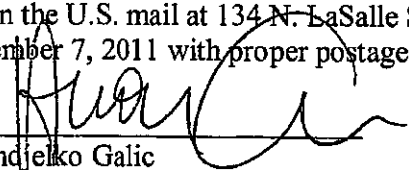
Joseph Younes, Mortgage Electronic Registration Systems,  
Inc., as nominee for HLB Mortgage, Unknown Heirs and  
legatees of Joseph Younes and unknown owners,  
Defendants/Cross-Defendants,

Paul Shelton, Erika Rhone and Stewart Title of Illinois.  
Cross-Defendants.

PROOF OF SERVICE

TO: See attached Service list

I, Andjelko Galic, an attorney, certify that I served Defendant's Motion to Dismiss Plaintiff's Third Amended Complaint with Proof of Service by mailing a copy to the above parties at the above listed address by depositing same in the U.S. mail at 134 N. LaSalle Street in Chicago, Illinois before the hour of 5:00 P.M. on November 7, 2011 with proper postage prepaid.

  
\_\_\_\_\_  
Andjelko Galic  
Attorney at law

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

FILED

U.S. Bank, N.A., as trustee for Morgan Stanley Loan Trust 2006-16AX,  
Plaintiff/Counter-Defendant,

NOV - 7 PM 12:51

vs.

JOSEPH BROWN No.: 07 CH 29738  
CLERK

RICHARD DANIGGELIS,  
Defendant/Counter-claimant and  
Cross-claimant,

Joseph Younes, Mortgage Electronic Registration Systems, Inc., as nominee for HLB Mortgage, Unknown Heirs and legatees of Joseph Younes and unknown owners,  
Defendants/Cross-Defendants,

Paul Shelton, Erika Rhone and Stewart Title of Illinois.  
Cross-Defendants.

DEFENDANT RICHARD DANIGGELIS' MOTION TO DISMISS THE  
PLAINTIFF'S THIRD AMENDED COMPLAINT PURSUANT TO  
735 ILCS 5/2-619(a)(2) WITH PREJUDICE

NOW COMES Defendant, RICHARD DANIGGELIS, and pursuant to 735 ILCS 5/2-619 (a)(2) moves this Court to Dismiss Plaintiff's Third Amended Complaint with prejudice. In support of his motion Richard Daniggelis states as follows:

1. On October 7, 2011, Plaintiff filed its Third Amended Complaint without amending deficiencies that have been identified in Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint. The Third Amended Complaint is in essence identical to the Second Amended Complaint in all relevant respects except for the so called "Corrective Assignment of Mortgage" attached to the Third Amended Complaint as Exhibit "C".
2. Plaintiff has withdrawn Count I of its Second Amended Complaint after Defendant raised the question of Plaintiff's standing to sue.
3. The Third Amended Complaint fails to provide any basis for allowing the current trustee for Morgan Stanley Loan Trust 2006-16AX to proceed with this litigation.
4. Plaintiff's Exhibit "C", the "Corrective Assignment of Mortgage" is executed on July 7, 2011 and it states that GMAC Mortgage, LLC as authorized agent did hereby

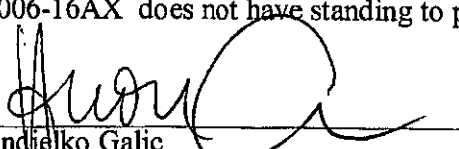
assign...and deliver to BANK OF AMERICA, N.A. AS TRUSTEE FOR MORGAN STANLEY LOAN TRUST 2006-16AX (the Assignee), its successors and assigns, prior to 06/06/2011, the mortgage subject to this litigation.

5. Plaintiff's exhibit "C", even if we assume its validity and its legal viability at this juncture in this litigation, does not indicate when the current plaintiff acquired any interest in this mortgage nor does it indicate the principal on whose behalf the GMAC assigned this mortgage to BANK OF AMERICA, N.A. AS TRUSTEE FOR MORGAN STANLEY LOAN TURST 2006-AX. Plaintiff's Exhibit "C", the "Corrective Assignment of Mortgage" is attached as Exhibit "A".
6. Since this foreclosure was filed in October of 2007 Plaintiff must show that it had standing to sue prior to filing this foreclosure action in October of 2007.
7. This 'corrective assignment of mortgage' appears to be nothing else but an attempt to divert the court's attention from the fact that according to the assignment, that was attached to Plaintiff's Second Amended Complaint to support of Plaintiff's standing to sue, was executed in November of 2009, more than two years after this foreclosure action was filed against Defendants.
8. The record on this matter clearly shows that the original mortgagee was M.E.R.S., Inc.
9. Plaintiff's Second Amended Complaint did not allege anything about how GMAC acquired any interest in this property, and the assignment from GMAC to LaSalle Bank National Association, that is now being corrected, is invalid on its face.
10. Plaintiff's Second Amended Complaint also contained Exhibit "C", a purported assignment of mortgage from GMAC to LaSalle Bank National Association executed in November of 2009. This assignment failed to identify the original mortgagor, it indicated that the mortgage in question was recorded on August 18, 2006 while Plaintiff's Second Amended Complaint alleged that this same mortgage was recorded on August 16, 2006.
11. Moreover, Plaintiff's Exhibit "C" attached to the Second Amended Complaint indicated that this mortgage was recorded in the County of Adams, State of Illinois under document number: 0622826139. Plaintiff's Complaint, however, was based on the mortgage that was recorded in Cook County under document number: 0622826138.
12. In addition, Exhibit "C" attached to Plaintiff's Second Amended Complaint indicated that at the time of the execution of this instrument the assignor did not have legal description of the property allegedly secured by the mortgage being assigned to LaSalle Bank National Association.
13. Moreover, the same Exhibit "C" from the Second Amended Complaint indicates that the 'signing officers' signed this Exhibit "C" on November 23, 2009 while the second page of this Exhibit "C" indicates that they appeared before a Notary Public and supposedly

executed this instrument on November 26, 2009, further indicating that this assignment is invalid.

14. The purported assignment dated November 23, 2009 is not a real assignment of mortgage subject to this litigation but rather a fraudulent attempt to hide the fact that the current Plaintiff has no standing to enforce the terms of this mortgage.
15. For similar reasons in paragraph number 3(j) of its Third Amended Complaint Plaintiff fails to specify capacity in which Plaintiff brings this suit. At this point Plaintiff must declare its capacity (to limit discovery and for other purposes) and cannot simply allege that it is either the legal holder, agent of the legal holder and/or a nominee of the legal holder.
16. The so called "Corrective Assignment of Mortgage" is correcting the previous assignment dated November 23, 2009, and thus, even if this "correction" was legal and even if retroactive assignments of mortgages were legal in Illinois, it would still fail because it would provide the Plaintiff with standing to sue two years after this foreclosure action was filed.
17. Plaintiff fails to provide any legal and/or factual basis for its implied assumption that retroactive corrections of this kind are allowed in Illinois and Plaintiff fails to allege anything that would suggest that the original assignment dated November 23, 2009 contained typographical errors and/or other errors that can be classified as scrivener's error, or anything along those lines, so that this "correction" clearly does not qualify as a correction of that sort. Under the very terms of this "correction" it is impossible to determine when the actual assignment of this mortgage was done and thus this "correction" must be deemed invalid.
18. Plaintiff has already had sufficient time to amend its pleading and to search for documents that would provide Plaintiff with standing to sue and Plaintiff has failed to provide any documents to that effect.

Wherefore Defendant, Richard Daniggelis prays for an order dismissing Plaintiff's Second Amended Complaint with prejudice pursuant to 735 ILCS 5/2-619(a)(2) because Plaintiff, U.S. Bank as Trustee Morgan Stanley Loan Trust 2006-16AX does not have standing to pursue this action.

  
Andjelko Galic  
Attorney for Defendant

Law Offices of Andjelko Galic  
134 N. LaSalle Street  
Suite 1810  
Chicago, Illinois 60602  
Tel. (312) 986-1510  
Attorney No.: 33013



Doc#: 1119310040 Fee: \$42.00  
Eugene "Gene" Moore RHP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 07/12/2011 04:24 PM Pg: 1 of 4

NAME: YOUNES, JOSEPH  
Loan# 2000538996-FNF

**CORRECTIVE  
ASSIGNMENT OF  
MORTGAGE**

*Exhibit "A"*

For good and valuable consideration, the sufficiency of which is hereby acknowledged, the undersigned GMAC MORTGAGE, LLC (hereinafter called the Assignor) as authorized agent did hereby assign, transfer, convey without warranties and without recourse; set over and deliver to BANK OF AMERICA, N.A. AS TRUSTEE FOR MORGAN STANLEY LOAN TRUST 2006-16AX (hereinafter called the Assignee), its successors and assigns, prior to 06/06/2011, the following described mortgage:

Date: July 28, 2006 Amount of Debt: \$583,100.00  
Mortgagor: JOSEPH YOUNES  
Mortgagee: M.E.R.S., INC. AS NOMINEE FOR HLB MORTGAGE  
Recorded on August 16, 2006 As Document 0622826138

In the Office of the Recorder/Registrar of COOK County, Illinois, and described as follows:

THE EAST 66 FEET OF LOT 8 IN C.J. HULLS SUBDIVISION OF BLOCK 51 IN CANAL TRUSTEE'S SUBDIVISION OF SECTION 33, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Permanent Real Estate Tax Number 14-33-324-044-0000  
Commonly known as: 1720 NORTH SEDGWICK STREET, CHICAGO, IL 60614

Together with all rights and interest in the same and the premises therein described and the note or obligation thereby secured.  
To have and to Hold the same unto the Assignee, its successors and assigns forever.

(CORPORATE SEAL) GMAC MORTGAGE, LLC

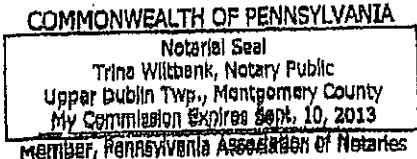
ATTEST: *Heather Harper*  
**Heather Harper**  
Authorized Officer

By: *Varinder Kaur 7/7/11*  
**Varinder Kaur** Authorized Officer  
*varinder kaur*

The Undersigned, a Notary Public in and for Montgomery County, State of Pennsylvania, does hereby certify that Varinder Kaur the Authorized Agent of GMAC MORTGAGE, LLC as authorized agent appeared before me this day and personally acknowledged that they are duly authorized to execute this Assignment of Mortgage, and that they are informed as to the contents, signed, sealed and delivered the foregoing Assignment of Mortgage as their free and voluntary act.

Subscribed and Sworn before me  
this 7 day of July, 2011.

*[Signature]*  
Notary Public  
JUL 07 2011



Prepared by & RETURN TO:  
Pierce & Associates, P.C.  
1 N. Dearborn  
Suite 1300  
Chicago, IL 60602  
PB#0715886



FILED  
2011 NOV -7 PM 12:51

CLERK  
DOFOTHY BROWN

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
 COUNTY DEPARTMENT, CHANCERY DIVISION - 1

U.S. Bank, N.A., as trustee for Morgan Stanley Loan  
 Trust 2006-16AX,  
 Plaintiff/Counter-Defendant,

vs.

RICHARD DANIGGELIS,  
 Defendant/Counter-claimant and  
 Cross-claimant,

Joseph Younes, Mortgage Electronic Registration Systems,  
 Inc., as nominee for HLB Mortgage, Unknown Heirs and  
 legatees of Joseph Younes and unknown owners,  
 Defendants/Cross-Defendants,

Paul Shelton, Erika Rhone and Stewart Title of Illinois.  
 Cross-Defendants.

CLERK OF COURT  
 COUNTY DEPARTMENT  
 CHANCERY DIVISION  
 No.: 07 CH 29738

DEFENDANT RICHARD DANIGGELIS' REPLY IN SUPPORT OF HIS  
 MOTION TO DISMISS THE PLAINTIFF'S THIRD AMENDED COMPLAINT  
 PURSUANT TO 735 ILCS 5/2-619(a)(2) WITH PREJUDICE

NOW COMES the Defendant, RICHARD DANIGGELIS, by AND THROUGH HIS  
 ATTORNEY Andjelko Galic, and as his Reply to Plaintiff's Response to Defendant's Motion to  
 Dismiss Pursuant to 735 ILCS 5/2-619 (a)(2) submits the following:

1. After Defendant file his Motion to Dismiss the Plaintiff has produced a copy of the Pooling and Servicing Agreement applicable to the Morgan Stanley Loan Trust 2006-6AX.
2. The Pooling and Servicing Agreement completely and unequivocally supports Defendant's motion to dismiss for lack of standing.
3. In addition, the Pooling and Servicing Agreement exposes the fraud that Plaintiff has been attempted to perpetrate on the Court and on the Defendant during this, more than 4 years long period, since October of 2007 when this litigation was initiated against the Defendant.
4. In its Response to Defendant's Motion to Dismiss Plaintiff, the Trustee for the Morgan Stanley Loan Trust 2006-16AX, is deliberately ignoring even the most basic terms of the Pooling and Servicing Agreement. Plaintiff is a very sophisticated entity and as such cannot claim ignorance or some other similar excuse for its wrongful actions undertaken over a 4 year time

frame, in an attempt to foreclose on Defendant's property knowing very well that it had no right or interest whatsoever to legally engage in any such activity.

5. Plaintiff's Original Complaint had a "Lost Assignment" Affidavit attached to it. See attached Exhibit "A". This is significant for purposes of showing that prior to filing the original complaint in this matter GMAC, as the original Plaintiff, knew that it did not have standing to proceed with this litigation.

6. In paragraph number 4 of the "Lost Assignment Affidavit" it is alleged that "Based upon information available to us, it appears the assignment of the Mortgage/Deed of Trust from GMAC MORTGAGE, LLC to LaSalle Bank National Association, as Trustee for Morgan Stanley Mortgage Loan Trust 2006-16AX was lost prior to recording when the loan was transferred from GMAC MORTGAGE, LLC to LaSalle Bank National Association, as Trustee for Morgan Stanley Mortgage Loan Trust 2006-16AX and is not obtainable. LaSalle Bank National Association, as Trustee for Morgan Stanley Mortgage Loan Trust 2006-16AX is the assignee, holder and owner of the loan".

7. If one ignores the fact that there is no set of facts under which the above statement could be true (this specific trust cannot be the assignee or the assignor) because the Morgan Stanley Loan Trust 2006-16AX is a passive trust, a Special Purpose Vehicle, specifically designed for purposes of obtaining a specific tax status to avoid double taxation, the allegation of paragraph number 4 is still significant because it is an admission that in October of 2007, prior to filing the original complaint in this matter, GMAC had no real interest in this mortgage and the note, and thus that GMAC and its attorneys knew, prior to filing of this Complaint that they had no standing to file it. The fact that the Original Complaint was filed, with this exhibit attached to it, only shows the audacity and complete disregard for the pre-filing requirements under the Supreme Court Rule 137.

8. All subsequent efforts undertaken by the Plaintiff and by its attorneys are nothing more than a blatant attempt to conceal the fact that the Plaintiff had no standing to initiate this mortgage foreclosure complaint in October of 2007 nor to continue it subsequent to October of 2007.

9. The evidence for the above claim is easily ascertainable from the basic terms of the Pooling and Servicing Agreement applicable to this trust.

10. The Pooling and Servicing Agreement is the document that creates a mortgage backed securitized trust and establishes the obligations and authority of the Master Servicer and other parties involved in formation and administration of such a trust. The Pooling and Servicing Agreement also establishes mandatory rules and procedures for the placing of mortgages and mortgage notes into the trust.

11. For purposes of adjudicating Defendant's Motion to Dismiss it is sufficient to point out that the Cut-off Date for this trust was October 1, 2006. See page 35 from the attached Exhibit "B" consisting of relevant definitions from the Pooling and Servicing Agreement.

12. In addition the Closing Date for this trust was October 31, 2006. See page 33 of the attached Exhibit "B".

13. It is a basic fact about securitization that each trust established for purposes of securitization of mortgages has a Cut Off Date that must be stated in the Pooling and Servicing Agreement. The Cut Off Date is the date on which all mortgage loans in the trust must be identified, and a final list of all of the mortgages placed in this trust must be set out. Each trust also has a Closing Date which is the date that the individual mortgages must transferred to the Trust Custodian, who must certify that for each mortgage that the Custodian has a mortgage note endorsed in blank and proof that the ownership of the note has been transferred to the trust by the Closing Date of the trust indicated in the Pooling and Servicing Agreement.

14. Plaintiff's effort to legalize the assignment of this mortgage from GMAC to the Morgan Stanley Loan Trust 2006-16AX in November of 2009 is a purely fictional "assignment" because this mortgage, if it was included in this trust should have been included prior to October 31, 2006, the Closing Date of this trust.

15. In addition, this trust being designed as a Special Purpose Vehicle (a passive trust for purposes of obtaining a desired tax treatment) does not have the ability to assign any mortgages, thus precluding the kind of transfers that would have been necessary for the Plaintiff to acquire this Mortgage from this the Morgan Stanley Loan Trust 2006-16AX after October 31, 2006. In any case, the kind of transaction, contemplated by Plaintiff's Response Exhibit E ("Corrective Assignment" dated July 7, 2011 and the Assignment of Mortgage" dated November 26, 2009), is not authorized in any provision of the Pooling and Servicing Agreement. In other words, these 'assignments' are not legal possibilities contemplated by the Pooling and Servicing Agreement, further indicating that these 'assignments' were fraudulent.

16. For similar reasons the 'assignment' from MERS to GMAC, attached as to Plaintiff's Response, as Response Exhibit "D", must be rejected. This assignment is not dated and it ignores the fact that the HLB, the original Lender, on August 1, 2006 already assigned its interest into this Mortgage to American Home Mortgage, thus leaving MERS, even assuming *arguendo* MERS had the authority to execute such an assignment, with nothing to assign on behalf of HLB on or about October 16, 2006. See attached Exhibit "C", the assignment form HLB Mortgage to American Home Mortgage dated August 1, 2006.

17. The crux of the Defendant's Motion to Dismiss is based on the documents Plaintiff has attached to its original complaint and its three additional and/or amended complaints filed on behalf of GMAC and the Morgan Stanley Loan Trust 2006-16AX, from October of 2007 until November of 2011. During this 4 year period Plaintiff has failed to produce a single document showing that the mortgage subject to this litigation was placed into the Morgan Stanley Loan Trust 2006-16AX by October 31, 2006, the closing date set for this trust by the applicable Pooling and Servicing Agreement.


18. Plaintiff's attorney has been advised about these details and about the fact that there is a significant amount of other evidence from other cases being litigated all over the United States of America, where the same parties involved in manufacturing this Plaintiff's documents submitted in this case, have admitted executing fraudulent assignments, have admitted that they were actually manufacturing those assignments in order to provide their attorneys with colorable right to foreclose on those properties and that those assignments were not prepared on their personal knowledge of the facts and inspection of the chain of title at the time of the alleged transfers but only after the attorneys who retained their services advised them that they did not have documents required to foreclose on those properties.

19. Plaintiff and its attorneys are fully aware of the consequences of these fraudulent assignments and are willingly undertaking this gamble and this Court has an obligation and duty to immediately end these types of foreclosures.

20. Defendant's former attorney was misled by Plaintiff's fraudulent documents and apparently made some concessions and Plaintiff should not be allowed to rely on such fraud-based admissions to proceed to gain full benefits of its own fraud. It is mind boggling that someone would in good faith even advance such an argument.

21. If this Court has any concerns regarding the arguments advanced in this Reply, this Court would be well advised to allow Defendant to submit an additional, more detailed memorandum regarding the Pooling and Servicing Agreement and its relevance for the Defendant's Motion to Dismiss. Defendant file his Motion to Dismiss on November 7, 2011 and did not motion it up for presentation in anticipation of receiving from the Plaintiff a copy of the Pooling and Servicing Agreement and incorporating it into Defendant's Motion to Dismiss. However the Plaintiff motioned Defendant's Motion to Dismiss for presentation on November 17, 2011 and produced a copy of the Pooling and Servicing Agreement on November 29, 2011. The Pooling and Servicing Agreement consists of some 180 pages of highly technical materials and Defendant's attorney was not able to incorporate all of the relevant provisions of that Pooling and Servicing Agreement in this Reply.

For all of the above reasons, the Defendant, Richard Daniggelis prays for an order dismissing Plaintiff's Third Amended Complaint with prejudice pursuant to 735 ILCS 5/2-619(a)(2) because Plaintiff, U.S. Bank N.A., as Trustee for Morgan Stanley Loan Trust 2006-16AX does not have standing to pursue this action.

  
Andjelko Galic  
Attorney for Defendant

Law Offices of Andjelko Galic  
134 N. LaSalle Street  
Suite 1810  
Chicago, Illinois 60602  
Tel. (312) 986-1510  
Attorney No.: 33013

D's Exhibit "A"

Record and Return To:  
Pierce and Associates  
1 N. Dearborn ST. Fl.13  
Chicago, IL 60602-4321  
PB# 0715886

Please Return To: DOCX  
1111 Alderman Dr.  
Suite 350  
Alpharetta, GA 30005

Please cross-reference to  
Mtg/DOT Recorded in  
Book N/A, Page N/A,  
Instr# 622826137  
Adams County, IL.

Project: A063  
Loan Number: 000-58942520  
Re: 1720 N. Sedgwick St Chicago, IL 60614

### LOST ASSIGNMENT AFFIDAVIT

STATE OF GA  
COUNTY OF Fulton

Linda Green, Being Vice President On behalf of Saxon Mortgage Servicing, Inc being duly sworn, deposes and says that to his/her best knowledge and belief under the penalty of perjury:

1. I am the Vice President for Saxon Mortgage Servicing, Inc the duly appointed and acting serving entity on behalf of LaSalle Bank National Association, as Trustee for Morgan Stanley Mortgage Loan Trust 2006-16AX, the current holder of a certain note dated 7/28/2006, made by Joseph Younes to the order of GMAC Mortgage LLC, in the principal sum of \$583100, together with interest at the rate of 8.75 percent (8.75%) per annum (hereinafter referred to as the "Note"). A copy of the Note is attached hereto as "Exhibit A".
2. The Note was secured by a Mortgage/Deed of Trust of same date made by Joseph Younes to GMAC Mortgage LLC, which Security Deed was recorded on 9/16/2006, in Book N/A, Page N/A, Instrument #622826137 in the office of recorder of Adams County, IL.
3. LaSalle Bank National Association, as Trustee for Morgan Stanley Mortgage Loan Trust 2006-16AX is now the current and has been the holder of the Note and LaSalle Bank National Association, as Trustee for Morgan Stanley Mortgage Loan Trust 2006-16AX has been in physical possession of all associated loan records since the loan was transferred.
4. Based upon the information available to us, it appears the assignment of the Mortgage/Deed of Trust from GMAC MORTGAGE, LLC to LaSalle Bank National Association, as Trustee for Morgan Stanley Mortgage Loan Trust 2006-16AX was lost prior to recording when the loan was transferred



MMS

from GMAC MORTGAGE, LLC to LaSalle Bank National Association, as Trustee for Morgan Stanley Mortgage Loan Trust 2006-16AX and it is not obtainable. LaSalle Bank National Association, as Trustee for Morgan Stanley Mortgage Loan Trust 2006-16AX is the assignee, holder and owner of the loan.

5.

Sworn to and subscribed before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Deponent:

  
\_\_\_\_\_  
Name: Linda Green

\_\_\_\_\_  
Notary Public:

MMS

000164

D's Exhibit "B"

MORGAN STANLEY CAPITAL I INC.  
*Depositor*

WELLS FARGO BANK, NATIONAL ASSOCIATION  
*Master Servicer and Securities Administrator*

and

LASALLE BANK NATIONAL ASSOCIATION  
*Trustee and Custodian*

---

POOLING AND SERVICING AGREEMENT  
Dated as of October 1, 2006

---

MORGAN STANLEY MORTGAGE LOAN TRUST 2006-16AX  
MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-16AX



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- the Aggregate Group I Principal Distribution Amount for that Distribution Date remaining after distribution of the Aggregate Group I Senior Principal Distribution Amount, the Class M-1 Principal Distribution Amount, the Class M-2 Principal Distribution Amount, the Class M-3 Principal Distribution Amount and the Class M-4 Principal Distribution Amount; and
- the excess (if any) of (A) the sum of (1) the Class Principal Balance of the Class M-5 Certificates immediately prior to that Distribution Date and (2) the aggregate Class Principal Balance of the Aggregate Group I Senior Certificates, Class M-1, Class M-2, Class M-3 and Class M-4 Certificates (after taking into account the payment of the Aggregate Group I Senior Certificates, Class M-1, Class M-2, Class M-3 and Class M-4 Principal Distribution Amounts for such Distribution Date) over (B) the lesser of (i) the aggregate Stated Principal Balance of the Aggregate Group I Mortgage Loans as of the last day of the related Due Period multiplied by 95.10% and (ii) the amount, if any, by which (x) the aggregate Stated Principal Balance of the Aggregate Group I Mortgage Loans as of the last day of the related Due Period exceeds (y) \$2,517,987.

Class M-6 Principal Distribution Amount: With respect to the Class M-6 Certificates and any Distribution Date (i) prior to the related Stepdown Date or on or after the related Stepdown Date if a Trigger Event is in effect for the Aggregate Group I Certificates for that Distribution Date, the Aggregate Group I Principal Distribution Amount for that Distribution Date remaining after distribution of the Aggregate Group I Senior Principal Distribution Amount, the Class M-1 Principal Distribution Amount, the Class M-2 Principal Distribution Amount, the Class M-3 Principal Distribution Amount, the Class M-4 Principal Distribution Amount and the Class M-5 Principal Distribution Amount or (ii) on or after the related Stepdown Date if a Trigger Event for the Aggregate Group I Certificates is not in effect for that Distribution Date, the lesser of:

- the Aggregate Group I Principal Distribution Amount for that Distribution Date remaining after distribution of the Aggregate Group I Senior Principal Distribution Amount, the Class M-1 Principal Distribution Amount, the Class M-2 Principal Distribution Amount, the Class M-3 Principal Distribution Amount, the Class M-4 Principal Distribution Amount and the Class M-5 Principal Distribution Amount; and
- the excess (if any) of (A) the sum of (1) the Class Principal Balance of the Class M-6 Certificates immediately prior to that Distribution Date and (2) the aggregate Class Principal Balance of the Aggregate Group I Senior Certificates, Class M-1, Class M-2, Class M-3, Class M-4 and Class M-5 Certificates (after taking into account the payment of the Aggregate Group I Senior Certificates, Class M-1, Class M-2, Class M-3, Class M-4 and Class M-5 Principal Distribution Amounts for such Distribution Date) over (B) the lesser of (i) the aggregate Stated Principal Balance of the Aggregate Group I Mortgage Loans as of the last day of the related Due Period multiplied by 96.00% and (ii) the amount, if any, by which (x) the aggregate Stated Principal Balance of the Aggregate Group I Mortgage Loans as of the last day of the related Due Period exceeds (y) \$2,517,987.

Class Optimal Interest Distribution Amount: Not applicable.

Class Principal Balance: With respect to any Class of Certificates other than the Class 1-OC and Class 3-OC Certificates and as to any date of determination, the aggregate of the Certificate Balances of all Certificates of such Class as of such date. With respect to the Class 1-OC Certificates and any Distribution Date, the Aggregate Group 1 Overcollateralized Amount as of that Distribution Date. With respect to the Class 3-OC Certificates and any Distribution Date, the Group 3 Overcollateralized Amount as of that Distribution Date.

Class Subordination Percentage: Not applicable.

Clearing Agency: An organization registered as a "clearing agency" pursuant to Section 17A of the Securities Exchange Act of 1934, as amended. As of the Closing Date, the Clearing Agency shall be The Depository Trust Company.

Clearing Agency Participant: A broker, dealer, bank, other financial institution or other Person for whom from time to time a Clearing Agency effects book-entry transfers and pledges of securities deposited with the Clearing Agency.

Closing Date: October 31, 2006.

Code: The Internal Revenue Code of 1986, as amended, and as it may be further amended from time to time, any successor statutes thereto, and applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

Collateralization Event: As defined in the Swap Agreement.

Commission: The U.S. Securities and Exchange Commission.

Compensating Interest Payment: As to any Distribution Date, an amount equal to the lesser of (i) the Prepayment Interest Shortfall on the Mortgage Loans serviced by such Servicer with respect to such Distribution Date and (ii) the portion of the applicable Servicing Fee that the related Servicer is required to remit to the Trust as compensation therefor in accordance with the terms of the related Purchase and Servicing Agreement.

Component: As specified in the Preliminary Statement.

Component Balance: With respect to any Component and any Distribution Date, the Initial Component Balance thereof on the Closing Date, (A) plus any Subsequent Recoveries added to the Component Balance of such Component pursuant to Section 5.02, (B) minus the sum of all amounts applied in reduction of the principal balance of such Component and Realized Losses allocated thereto on previous Distribution Dates.

Component Certificates: As specified in the Preliminary Statement.

Component Notional Amount: Not applicable.

Confirmation: With respect to the Swap Agreement, the related Confirmation dated October 31, 2006, evidencing the transaction between the Swap Counterparty and the Securities Administrator on behalf of the Trust Fund.

Consent: A document executed by the Cooperative Corporation (i) consenting to the sale of the Cooperative Unit to the Mortgagor and (ii) certifying that all maintenance charges relating to the Cooperative Unit have been paid.

Controlling Person: With respect to any Person, any other Person who "controls" such Person within the meaning of the Securities Act.

Cooperative Corporation: The entity that holds title (fee or an acceptable leasehold estate) to the real property and improvements constituting the Cooperative Property and which governs the Cooperative Property, which Cooperative Corporation must qualify as a Cooperative Housing Corporation under Section 216 of the Code.

Cooperative Loan: A Mortgage Loan secured by Cooperative Shares and a Proprietary Lease, if any.

Cooperative Property: The real property and improvements owned by the Cooperative Corporation, that includes the allocation of individual dwelling units to the holders of the shares of the Cooperative Corporation.

Cooperative Shares: Shares issued by a Cooperative Corporation.

Cooperative Unit: With respect to any Cooperative Loan, a specific unit in a Cooperative Property.

Corporate Trust Office: With respect to the Trustee, the designated office of the Trustee in the State of Illinois at which at any particular time its corporate trust business with respect to this Agreement is administered, which office at the date of the execution of this Agreement is located at 135 South LaSalle Street, Suite 1511, Chicago, Illinois 60603, Attn: Global Securities and Trust Services MSM 2006-16AX, and which is the address to which notices to and correspondence with the Trustee should be directed, or at such other address as the Trustee may designate from time to time by notice to the Certificateholders, the Depositor, the Master Servicer and the Securities Administrator or the principal corporate trust office of any successor Trustee. With respect to the Certificate Registrar and presentment of Certificates for registration of transfer, exchange or final payment, Wells Fargo Bank, National Association, Sixth Street and Marquette Avenue, Minneapolis, Minnesota 55479, Attention: Corporate Trust, Morgan Stanley Mortgage Loan Trust 2006-16AX, and for all other purposes, P.O. Box 98, Columbia, Maryland 21046 (or for overnight deliveries, 9062 Old Annapolis Road, Columbia, Maryland 21045), Attention: Corporate Trust, Morgan Stanley Mortgage Loan Trust 2006-16AX.

Custodial Account: Each custodial account (other than an Escrow Account) established and maintained by a Servicer pursuant to a Purchase and Servicing Agreement.

Custodial Agreement: Not applicable.

Custodial Delivery Failure: With respect to any Custodian appointed hereunder, as defined in Section 6.21 hereof.

Custodian: A Person who is at anytime appointed by the Depositor as a custodian of the Mortgage Documents and the Trustee Mortgage Files. The initial Custodian is LaSalle Bank, National Association.

Custodian Certification: As defined in Section 2.01.

Cut-off Date: October 1, 2006.

Cut-off Date Pool Principal Balance: \$956,297,395.

Cut-off Date Principal Balance: As to any Mortgage Loan, the Stated Principal Balance thereof as of the close of business on the Cut-off Date.

Debt Service Reduction: With respect to any Mortgage Loan, a reduction by a court of competent jurisdiction in a proceeding under the Bankruptcy Code in the Scheduled Payment for such Mortgage Loan which became final and non-appealable, except such a reduction resulting from a Deficient Valuation or any reduction that results in a permanent forgiveness of principal.

Deceased Holder: Not applicable.

Defaulted Swap Termination Payment: Any Swap Termination Payment required to be paid by the Supplemental Interest Trust to the Swap Counterparty pursuant to the Swap Agreement as a result of an Event of Default (as defined in the Swap Agreement) with respect to which the Swap Counterparty is the defaulting party or a Termination Event (as defined in the Swap Agreement) (other than Illegality or a Tax Event that is not a Tax Event Upon Merger (each as defined in the Swap Agreement)) with respect to which the Swap Counterparty is the sole Affected Party (as defined in the Swap Agreement).

Defective Mortgage Loan: The meaning specified in Section 2.05(a).

Deficient Valuation: With respect to any Mortgage Loan, a valuation of the related Mortgaged Property by a court of competent jurisdiction in an amount less than the then outstanding indebtedness under the Mortgage Loan, or any reduction in the amount of principal to be paid in connection with any Scheduled Payment that results in a permanent forgiveness of principal, which valuation or reduction results from an order of such court which is final and non-appealable in a proceeding under the Bankruptcy Code.

Definitive Certificate: A Certificate of any Class issued in definitive, fully registered, certificated form. As of the Closing Date the Classes of Certificates being issued as "Definitive Certificates" are set forth in the Preliminary Statement.

Delay Certificates: As specified in the Preliminary Statement.

Deleted Mortgage Loan: A Mortgage Loan that is repurchased, or replaced or to be replaced with a Replacement Mortgage Loan.

Delinquent: Any Mortgage Loan with respect to which the Scheduled Payment due on a Due Date is not received.



Depositor: Morgan Stanley Capital I Inc., a Delaware corporation having its principal place of business in New York, or its successors in interest.

Depository: Cede & Co., or any other organization registered as a "clearing agency" pursuant to Section 17A of the Securities Exchange Act of 1934, as amended. The Depository shall initially be the registered Holder of the Book-Entry Certificates. The Depository shall at all times be a "clearing corporation" as defined in Section 8-102(a)(5) of the Uniform Commercial Code of the State of New York.

Determination Date: With respect to each Servicer, the "Determination Date" set forth in the related Purchase and Servicing Agreement.

Disqualified Organization: A "disqualified organization" as defined in Section 860E(e)(5) of the Code.

Distribution Account: The separate Eligible Account created and maintained by the Securities Administrator, on behalf of the Trustee, pursuant to Section 4.01. Funds in the Distribution Account (exclusive of any earnings on investments made with funds deposited in the Distribution Account) shall be held in trust for the Trustee and the Certificateholders for the uses and purposes set forth in this Agreement.

Distribution Account Deposit Date: With respect to each Servicer, not later than 1:00 p.m., New York time, on 18th day of each calendar month after the initial issuance of the Certificates or, if such 18th day is not a Business Day, either the immediately preceding or immediately following Business Day, as set forth in the related Acknowledgement, commencing in November 2006.

Distribution Date: The 25th day of each month or, if such 25th day is not a Business Day, the next succeeding Business Day, commencing in November 2006.

Due Date: With respect to any Distribution Date, the first day of the month in which such Distribution Date occurs. With respect to any Mortgage Loan, the date on which a Scheduled Payment is due under the related Mortgage Note as indicated in the applicable Purchase and Servicing Agreement.

Due Period: As to any Distribution Date, the calendar month prior to such Distribution Date.

EDGAR: The Commission's Electronic Data Gathering, Analysis and Retrieval system.

Eligible Account: Any of (i) an account or accounts maintained with a federal or state chartered depository institution or trust company the short-term unsecured debt obligations of which (or, in the case of a depository institution or trust company that is the principal subsidiary of a holding company, the debt obligations of such holding company) have the highest short-term ratings of each Rating Agency at the time any amounts are held on deposit therein, or (ii) an account or accounts in a depository institution or trust company in which such accounts are insured by the FDIC or the SAIF (to the limits established by the FDIC or the SAIF) and the uninsured deposits in which accounts are otherwise secured such that, as evidenced by an

Opinion of Counsel delivered to the Trustee, the Securities Administrator and to each Rating Agency, the Certificateholders have a claim with respect to the funds in such account or a perfected first priority security interest against any collateral (which shall be limited to Permitted Investments) securing such funds that is superior to claims of any other depositors or creditors of the depository institution or trust company in which such account is maintained, or (iii) a trust account or accounts maintained with the trust department of a federal or state chartered depository institution or trust company, acting in its fiduciary capacity or (iv) any other account acceptable to each Rating Agency, as evidenced by a signed writing delivered by each Rating Agency. Eligible Accounts may bear interest, and may include, if otherwise qualified under this definition, accounts maintained with the Trustee, the Paying Agent, the Securities Administrator or the Master Servicer.

Eligible Institution: An institution having the highest short-term debt rating, and one of the two highest long-term debt ratings of the Rating Agencies or the approval of the Rating Agencies.

ERISA: The Employee Retirement Income Security Act of 1974, as amended.

ERISA-Qualifying Underwriting: A best efforts or firm commitment underwriting or private placement that meets the requirements of an Underwriter's Exemption.

ERISA-Restricted Certificate: As specified in the Preliminary Statement.

Escrow Account: With respect to each Mortgage Loan, as defined in Article I of the related Purchase and Servicing Agreement.

Estoppel Letter: A document executed by the Cooperative Corporation certifying, with respect to a Cooperative Unit, (i) the appurtenant Proprietary Lease will be in full force and effect as of the date of issuance thereof, (ii) the related stock certificate was registered in the Mortgagor's name and the Cooperative Corporation has not been notified of any lien upon, pledge of, levy of execution on or disposition of such stock certificate, and (iii) the Mortgagor is not in default under the appurtenant Proprietary Lease and all charges due the Cooperative Corporation have been paid.

Event of Default: Any one of the conditions or circumstances enumerated in Section 6.14.

Exchange Act: The Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

Exchange Act Reports: Any reports on Form 10-D, Form 8-K and Form 10-K required to be filed with respect to the Trust Fund under the Exchange Act.

Fannie Mae: The entity formerly known as the Federal National Mortgage Association, a federally chartered and privately owned corporation organized and existing under the Federal National Mortgage Association Charter Act, or any successor thereto.

FDIC: The Federal Deposit Insurance Corporation or any successor thereto.

D/S Exhibit "C"

DUPLICATE ORIGINAL

KNOW THAT

HLB Mortgage  
520 Broadhollow Road  
Melville, NY 11747

assignor,

in consideration of TEN dollars,

paid by American Home Mortgage  
520 Broadhollow Road  
Melville, NY 11747

assignee,

hereby assigns unto the assignee,  
Mortgage dated July 28, 2006

made by Joseph Younes

to HLB Mortgage

in the principal sum of \$583,100.00 intended to be recorded nearly simultaneously herewith  
in the Office of the County Clerk of the County of Cook, covering premises  
commonly known as 1720 N Sedgwick St, Chicago, IL 60614,  
which premises are more particularly described in the aforesaid  
mortgage being assigned herewith.

THIS ASSIGNMENT IS NOT SUBJECT TO THE REQUIREMENTS OF SECTION 275 OF THE  
REAL PROPERTY LAW BECAUSE IT IS AN ASSIGNMENT IN THE SECONDARY  
MORTGAGE MARKET.

Together with the bond or note or obligation described in said mortgage, and the monies due and to  
grow due thereon with the interest; TO HAVE AND TO HOLD the same unto the assignee and to  
the successors, legal representatives and assigns of the assignee forever.

The word "assignor" or "assignee" shall be construed as if it read "assignors" or "assignees"  
whenever the sense of this instrument so requires.

IN WITNESS WHEREOF, the assignor has duly executed this assignment the 1st day of August  
2006

HLB Mortgage

BY: \_\_\_\_\_

ANDREW VALENTINE  
Authorized Signatory

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

U.S. Bank, N.A., as trustee for Morgan Stanley Loan )  
Trust 2006-16AX, )  
Plaintiff/Counter-Defendant, )

vs. )

No.: 07 CH 29738

RICHARD DANIGGELIS, )  
Defendant/Counter-claimant and )  
Cross-claimant, )

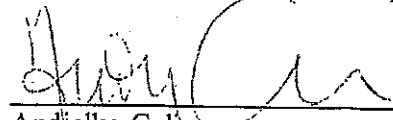
Joseph Younes, Mortgage Electronic Registration Systems, )  
Inc., as nominee for HLB Mortgage, Unknown Heirs and )  
legatees of Joseph Younes and unknown owners, )  
Defendants/Cross-Defendants, )

Paul Shelton, Erika Rhone and Stewart Title of Illinois. )  
Cross-Defendants. )

PROOF OF SERVICE

TO: See attached Service list

I, Andjelko Galic, an attorney, certify that I served Defendant's Reply to Motion to Dismiss Plaintiff's Third Amended Complaint with Proof of Service by mailing a copy to the above parties at the above listed address by depositing same in the U.S. mail at 134 N. LaSalle Street in Chicago, Illinois before the hour of 5:00 P.M. on December 16, 2011 with proper postage prepaid.

  
\_\_\_\_\_  
Andjelko Galic  
Attorney at law



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CALENDAR: 61  
PAGE 1 of 7  
CIRCUIT COURT OF  
COOK COUNTY, ILLINOIS  
CHANCERY DIVISION  
CLERK DOROTHY BROWN

33013

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

Bank, N.A., as trustee for Morgan Stanley Loan )  
2006-16AX, )

Plaintiff/Counter-Defendant, )  
)  
)

vs. )

No.: 07 CH 29738 )  
)  
)

RICHARD DANIGGELIS, )  
Defendant/Counter-claimant and )  
Cross-claimant, )

**RICHARD DANIGGELIS' RESPONSE TO PLAINTIFF'S MOTION TO DISMISS**

Now comes the Defendant, Richard Daniggelis, by and through his attorney Andjelko Galic and as his Response to Plaintiff's motion to dismiss states as follows.

1. On May 15, 2014 Plaintiff presented its motion to dismiss but Plaintiff's motion is actually seeking to vacate the judgment of foreclosure entered on March 20, 2013. Plaintiff's motion fails to specify any statutory grounds for Plaintiff's motion.
2. Moreover, on May 15, 2014 Plaintiff also presented its "motion to dismiss" before Judge Kyriakopoulos and Judge Kyriakopoulos entered an order dismissing this cause without prejudice. In addition, the order entered by Judge Kyriakopoulos incorrectly indicated that there are no pending cross claims or counter claims. See attached Exhibit "A" a copy of the order entered on May 15, 2014 by Judge Kyriakopoulos.
3. In Illinois Plaintiff has the right to voluntarily dismiss its complaint. However, this right is not absolute. Section 5/2-1009 from our Code of Civil Procedure provides the requirements for a voluntary dismissal. The statute provides as follows:
  - (a) The plaintiff may, at any time before trial or hearing begins, upon notice to each party who has appeared or each such party's attorney, and upon payment of costs, dismiss his or her action or any part thereof as to any defendant, without prejudice, by order filed in the cause.
  - (b) The court may hear and decide a motion that has been filed prior to a motion filed under subsection (a) of this Section when the prior filed motion, if favorably ruled on by the court, could result in a final disposition of the cause
  - (c) After trial or hearing begins, the plaintiff may dismiss, only on terms fixed by the court (1) upon filing a stipulation to that effect signed by the Defendant, or (2) on motion specifying the ground for dismissal, which shall be supported by affidavit or other proof.

(d) A dismissal under subsection (a) of this Section does not dismiss a pending counterclaim or third party complaint. 735 ILCS 5/2-1009 (a-d) (West 2009).

4. The Illinois Supreme Court in *Morrison v. Wagner* has further clarified that "Section 2-1009(a) of the Code of Civil Procedure, by its terms, confers on plaintiffs an 'unfettered right' to voluntarily dismiss a claim without prejudice, upon proper notice and payment of costs, 'at any time before trial or hearing begins.' *Morrison v. Wagner*, 191 Ill.2d162, 729 N.E.2d 496, 288 (2000) This provision, the Court goes on to note, is subject to two qualifications: (1) If a previously filed defense motion could result in a final disposition of the cause of action, the court has the discretion to hear and decide that motion before ruling on the motion for voluntary dismissal. (2) If circumstances of the case are such that dismissal would directly conflict with a specific rule of the Supreme Court, the terms of the rule take precedence over the plaintiff's right to voluntarily non-suit the case. *Morrison v. Wagner*, 191 Ill.2d162, 729 N.E.2d 496, 288 (2000). The trial court in *Morrison*, basing its decision on Supreme Court Rule 219(e), denied the plaintiff's motion to voluntarily dismiss the case because the court believed the plaintiff sought to avoid compliance with discovery deadlines. *Morrison v. Wagner*, 191 Ill.2d162, 729 N.E.2d 496, 288 (2000).

5. In this case by filing its motion to dismiss Plaintiff is seeking to prevent Richard Daniggelis from appealing the order entered on February 15, 2013 and on March 20, 2013 which would be in conflict with the Supreme Court Rule 304(a) and the order entered on May 15, 2014 granting Younes' motion for adding 304(a) language to these orders.

6. If Plaintiff is seeking to dismiss the entire case and all orders entered in this case so far then Defendant, Richard Daniggelis, has no objection to Plaintiff's motion to dismiss.

7. If Plaintiff is seeking anything other than the dismissal of the entire case against all defendants Plaintiff's motion must be denied because its purpose is to mute Richard Daniggelis' right to appeal the orders entered on February 15 and on March 20, 2014.

Wherefore, Defendant Richard Daniggelis, prays for an order denying Plaintiff's motion to dismiss and/or in the alternative to grant Plaintiff's motion to dismiss if Plaintiff is seeking to dismiss this cause of action in its entirety.

Respectfully submitted,

  
Andjelko Galic

Law Office of Andjelko Galic  
Attorney for Richard Daniggelis  
134 N. LaSalle Street, Suite 1040  
Chicago, IL 60602  
(312) 986- 1510  
Attorney No. 3301

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2007-CH-29738  
PAGE 2 of 7

RETURN TO THE COURT

IN THE DISTRICT COURT OF THE STATE OF TEXAS  
COUNTY OF [illegible]

THE STATE OF TEXAS, by and through the undersigned Attorney General,  
vs.  
[illegible]

ORDER OF DISMISSAL

DEFENDANTS

ORDER OF DISMISSAL

The above cause coming on to be heard on Motion of the Plaintiff, and the  
[illegible]

It is hereby ORDERED that the above cause is dismissed with prejudice to  
[illegible]

Witness my hand and the seal of the Court at [illegible] this [illegible] day of [illegible] 19[illegible].

[Handwritten signature]

CLERK OF COURT  
COUNTY OF [illegible]





IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

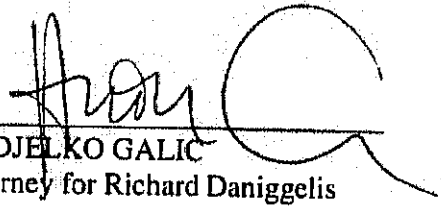
U.S. Bank, N.A., as trustee for Morgan Stanley Loan )  
Trust 2006-16AX, )  
Plaintiff/Counter-Defendant, )  
vs. )  
RICHARD DANIGGELIS, )  
Defendant/Counter-claimant and )  
Cross-claimant, )

No.: 07 CH 29738

NOTICE OF FILING

TO: See attached Service List

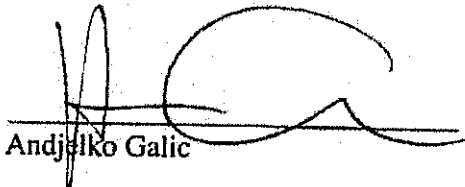
You are hereby given notice that on June 17, 2014, we electronically filed with the Clerk of the Circuit Court of Cook County our Response to Plaintiff's Motion to Dismiss, a copy of which is attached and is hereby served upon you.



ANDJELKO GALIC  
Attorney for Richard Daniggelis  
134 N. LaSalle Street, Suite 1040  
Chicago, IL 60602  
(312) 986- 1510  
Attorney No. 33013

CERTIFICATE OF SERVICE

I, Andjelko Galic, an attorney, certify that I caused this Notice of Filing to be served by placing a copy of it in an envelope addressed the above party at the above address and depositing the same in the U.S. mailbox in Chicago, on June 17, 2014 with proper postage prepaid.

  
Andjelko Galic

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2007-CH-29738  
PAGE 4 of 7

**SERVICE LIST**

**Pearce and Associates, P.C.**  
**1 N. Dearborn Street, Suite 1300**  
**Chicago, Illinois 60602**

**Peter King, Esq.**  
**King Holloway LLC**  
**101 N Wacker Drive, Suite 2010**  
**Chicago, IL 60606**

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**2007-CH-29738**  
**PAGE 5 of 7**

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

U.S. Bank, N.A., as trustee for Morgan Stanley Loan )  
Trust 2006-16AX, )  
Plaintiff/Counter-Defendant, )

vs. )

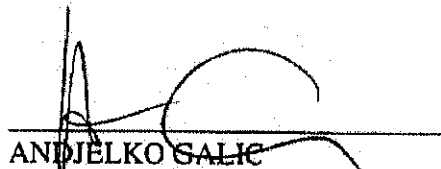
No.: 07 CH 29738

RICHARD DANIGGELIS, )  
Defendant/Counter-claimant and )  
Cross-claimant, )

NOTICE OF FILING

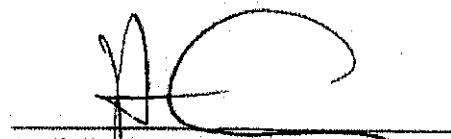
TO: See attached Service List

You are hereby given notice that on June 17, 2014, we electronically filed with the Clerk of the Circuit Court of Cook County our Response to Plaintiff's Motion to Dismiss, a copy of which is attached and is hereby served upon you.

  
ANDJELKO GALIC  
Attorney for Richard Daniggelis  
134 N. LaSalle Street, Suite 1040  
Chicago, IL 60602  
(312) 986- 1510  
Attorney No. 33013

CERTIFICATE OF SERVICE

I, Andjelko Galic, an attorney, certify that I caused this Notice of Filing to be served by placing a copy of it in an envelope addressed the above party at the above address and depositing the same in the U.S. mailbox in Chicago, on June 17, 2014 with proper postage prepaid.

  
Andjelko Galic

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PAGE 6 of 7

**SERVICE LIST**

**Pearce and Associates, P.C.**  
**1 N. Dearborn Street, Suite 1300**  
**Chicago, Illinois 60602**

**Peter King, Esq.**  
**King Holloway LLC**  
**101 N Wacker Drive, Suite 2010**  
**Chicago, IL 60606**

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**PAGE 7 OF 7**

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33013

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION: 01

U.S. Bank, N.A., as trustee for Morgan Stanley Loan  
Trust 2006-16AX,  
Plaintiff/Counter-Defendant,

CIRCUIT COURT OF COOK  
COUNTY, ILLINOIS  
CHANCERY DIV.

CLERK  
COURTNEY BROWN

vs.

No.: 07 CH 29738

RICHARD DANIGGELIS,  
Defendant/Counter-claimant and  
Cross-claimant,

MOTION TO RECONSIDER THE ORDER ENTERED ON MAY 15, 2014

Now comes the Defendant/Counter-plaintiff, Richard Daniggelis, by and through his attorney Andjelko Galic and pursuant to Section 5/2-1203 moves this court to reconsider the order entered on May 15, 2014. In support of his motion Defendant/Counter-plaintiff Richard Daniggelis, states as follows:

1. On May 15, 2014 this court entered an order and granted Joseph Younes' motion for a 304(a) finding, allowing Joseph Younes to withdraw his Motion for Possession and entering a briefing schedule on Plaintiff's Motion to Dismiss the foreclosure complaint. In addition, on May 15, 2014 this court entered a memorandum of judgment.
2. The Supreme Court Rule 304(a) states that if multiple parties or multiple claims for relief are involved in an action, an appeal may be taken from a final judgment as to one or more but fewer than all of the parties or claims only if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both.
3. On December 31, 2013 Joseph Youness filed his motion for a 304(a) finding together with his motion for possession. These two motions, if granted, would have resolved all issues that were unresolved between these two parties.
4. However, on March 18, 2014 Joseph Younes filed his Motion to Withdraw his Motion for Oder of Possession.
5. In addition, on May 15, 2014 Plaintiff presented its Motion to Dismiss the underlying foreclosure case and that motion is set for hearing on August 7, 2014.
6. The above facts clearly show that all the issues between Joseph Younes and Richard Daniggelis have not been resolved yet and therefore that this Court should not have granted Yones' motion for 304(a) language because possession is an issue that has

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CHANCERY DIVISION

not been resolved and Joseph Younes did not even file a motion asking for leave to sever his possession claim from this case. Younes is currently involved in forum shopping in an effort to secure a forum that is more likely to grant him possession to the subject property. Even if he is allowed to proceed with his claim in the Municipal Department this additional litigation will result in needless increase in the costs of litigation. Separating these claims at this point in this litigation cannot be justified in terms of judicial economy and thus this Court should reconsider its May 15, 2014 order granting Younes' motion for 304(a) language.

7. Moreover, Plaintiff's Motion to Dismiss the underlying foreclosure complaint directly impacts on Richard Daniggelis' right to appeal the order entered on May 15, 2014. If this Court were to grant Plaintiff's Motion to Dismiss that order would render any appeal of the May 15, 2014 order filed by Daniggelis moot and Mr. Daniggelis would lose his right to appeal the order entered on May 15, 2014.

Wherefore, Defendant Richard Daniggelis, prays for an order reconsidering the order entered on May 15, 2014 granting Younes' motion for 304(a) languages and/or in the alternative staying the enforcement and/or appeal of the May 15, 2014 order granting Younes' motion for 304(a) language until after this Court rules on Plaintiff's motion to dismiss.

Respectfully submitted,

  
Andjelko Galic

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

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U.S. Bank, N.A., as trustee for Morgan Stanley Loan  
Trust 2006-16AX,  
Plaintiff/Counter-Defendant,

vs.

RICHARD DANIGGELIS,  
Defendant/Counter-claimant and  
Cross-claimant,


CIRCUIT COURT OF COOK  
COUNTY, ILLINOIS  
CHANCERY DIV.

NORRITHY BROWN, CLERK  
No.: 07 CH 29738

NOTICE OF FILING

TO: See attached Service List

You are hereby given notice that on June 13, 2014, we filed with the Clerk of the Circuit Court of Cook County our Motion to Reconsider the Order Entered on May 15, 2014, a copy of which is attached and is hereby served upon you.

  
ANDJELKO GALIC  
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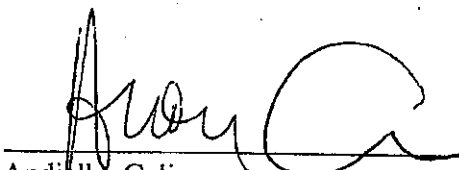
NORRITHY BROWN  
CLERK OF THE CIRCUIT COURT  
COUNTY DEPARTMENT

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CERTIFICATE OF SERVICE

I, Andjelko Galic, an attorney, certify that I caused this Notice of Filing to be served by placing a copy of it in an envelope addressed the above party at the above address and depositing the same in the U.S. mailbox at 134 North LaSalle Street in Chicago, before the hour of 5 p.m. on June 13, 2014 with proper postage prepaid.

  
Andjelko Galic

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