

**IN THE CIRCUIT COURT OF THE 6TH JUDICIAL CIRCUIT,  
IN AND FOR PINELLAS COUNTY, FLORIDA**

BIG BAD BANK

Plaintiff,

vs.

CASE NO: 12345678

JOHN DOE, ET AL,

Defendant.

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**DEFENDANT MOTION TO DISMISS FOR PLAINTIFF'S LACK OF  
STANDING TO BRING THIS ACTION**

**COMES** now the Defendant, JOHN DOE and for his motion to dismiss for Plaintiff's lack of standing to bring this action and states:

1. The Plaintiff lacks the standing to sue the Defendant as it was not a party to the mortgage contract attached to the Complaint.
2. There is no document attached to the Complaint that evidences the Plaintiff's relationship to the original lender. The inability to attach the documentation evidencing the Plaintiff's right to bring this action violates and is not in compliance with F.R.C.P. 1.130, evidencing any assignment of right to the Plaintiff to file this action.
3. The inability to attach the documentation evidencing the Plaintiff's right to bring this action violates and is not in compliance with F.R.C.P. 1.130, evidencing any assignment of right to the Plaintiff to file this action.
4. In Florida, the prosecution of a foreclosure action is by the owner and holder of the mortgage and the note. Plaintiff is not entitled to maintain this action in which it seeks to foreclose on a note which Plaintiff does not own. Your Construction Center, Inc. v. Gross, 316 So.2d 596 (Fla. 4th DCA 1975).

5. Standing requires that the party prosecuting the action have a sufficient stake in the outcome and that the party bring the claim be recognized in the law as being the real party in interest entitled to bring the claim. This entitlement to prosecute a claim in Florida Courts rests exclusively in those persons granted by substantive law, the power to enforce the claim. *Kumar Corp. v. Nopal Lines Ltd, et al*, 462 So.2d 1178 (Fla. 3d. DCA 1985).
6. The Plaintiff fails to maintain any of the criteria's of F.R.C.P. 1.210(a) which provides, in pertinent part: "Every action may be prosecuted in the name of the real party in interest, But a personal representative, administrator, guardian, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party expressly authorized by statute may sue in that person's own name without joining the party for whose benefit the action is brought".
7. No Florida case holds that a separate entity may maintain suit on a note payable to another entity unless the requirements of F.R.C.P. 1.210(a) are met. *Concoran v. Brody*, 347 So.2d 689 (Fla. 4th DCA 1977).
8. Although the Plaintiff claims to be the owner of the promissory note, the note submitted shows that another party is the owner of the note. The note makes no mention of Plaintiff. When exhibits are inconsistent with Plaintiff's allegations of material facts as to who the real party in interest is, such allegations cancel each other out. *Fladell v. Palm Beach County Canvassing Board*, 772 So.2d 1240 (Fla. 2000); *Greenwald v. Triple D Properties, Inc.* 424 So.2d 185, 187 (Fla. 4th DCA 1983) *Costa Bella Development Corp. v. Costa Development Corp*, 411 So.2d 114 (Fla. 3d. DCA 1983).

**WHEREFORE**, Defendant, JOHN DOE, requests this court dismiss the Plaintiff's complaint and for all other relief to which this Defendant proves himself entitled.

**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing was sent on May \_\_\_\_\_, 2009 via

U.S. Mail to:

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