

**IN THE CIRCUIT COURT OF THE 13TH JUDICIAL CIRCUIT,
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA**

US BANK, N.A., AS TRUSTEE FOR BIG BAD BANK,

Plaintiff,

vs.

CASE NO: 12345

JOHN DOE, ET AL,

Defendant.

_____ /

DEFENDANT’S MOTION TO DISMISS FOR IMPROPER PARTY

The Defendant, **JOHN DOE**, moves this honorable Court to dismiss the above-styled cause for failure to attach or properly plead, and would show that:

1. On the face of the Complaint, Defendant entered into a mortgage with **ABCD MORTGAGE FUNDING, INC.**, which is a Corporation organized under the laws of the State of **New York**.
2. Defendant did not enter into any transaction with Plaintiff.
3. No assignment of the note and mortgage has been pleaded in this case and no assignment has been recorded in **Hillsborough County, Florida**, to the best of Defendant’s knowledge.
4. Plaintiff, **US BANK, N.A., AS TRUSTEE FOR BIG BAD BANK**, is not the real party in interest in this case.
5. It is not sufficient to plead merely that the loan was “assigned.” See: *Jeff-Ray Corp. v. Jacobson*, 566 So.2d 885 (Fla. 4th DCA 1990); see also, *Progressive Express Ins. co. v. McGrath Comm. Chiro.* 913 So.2d 1281 (Fla. 2d DCA 2005).

WHEREFORE, Defendant, **JOHN DOE**, moves this honorable Court dismiss the Complaint for failure to join the real party in interest as a party-Plaintiff to this action.

CERTIFICATE OF SERVICE

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

U.S. Mail to:

Danny The Lazy Lawyer
Florida Default Law Group, P.L.
P.O. Box 25018
Tampa, FL 33622-5018
(813) 251-4766

JOHN DOE
1344 Main Street,
Anytown, FL 32345
(201) 555-1212

FORECLOSUREPROSE.COM