

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CIVIL DIVISION

DEUTSCHE BANK NATIONAL TRUST COMPANY
F/K/A BANKERS TRUST COMPANY OF CALIFORNIA, N.A.,
AS TRUSTEE UNDER THE POOLING AND SERVICING
AGREEMENT DATED AS OF MAY 1, 2001, MORGAN
STANLEY DEAN WITTER CAPITAL, INC.,

Plaintiff,

v.

DONNIE J. DECKER, *et. al.*

Defendants.

Case No. 09-20548-CI-13

RECEIVED
JUN 18 2010

ORDER GRANTING MOTION TO DISMISS COMPLAINT

THIS CAUSE, having come before the Court on the Motion to Dismiss Complaint of Defendants, and the Court, having reviewed the motion, heard the arguments of counsel, and being duly advised in the premises, it is hereby;

ORDERED AND ADJUDGED as follows:

1. In the Complaint, Plaintiff sued to foreclose a mortgage (Count One) and to re-establish a lost note (Count Two). Although Plaintiff alleges it is the "owner and holder" of the Note and Mortgage "by virtue of assignment," these allegations are insufficient to state a cause of action in light of the other, inconsistent allegations in Plaintiff's Complaint and the exhibits thereto.

2. First off, the Note and Mortgage are not in Plaintiff's name, but were entered on behalf of Maxwell Mortgage, Inc. Plaintiff fails to allege any ultimate facts showing how it is the "owner and holder" of a Note and Mortgage in the name of Maxwell Mortgage, Inc. The Note does not contain an indorsement or allonge. Although Plaintiff alleges it is the owner and