

ORIGINAL

~~QUEENS COUNTY CLERK~~

Short Form Order

~~08 SEP 20 11 41 AM~~
NEW YORK SUPREME COURT - QUEENS COUNTY

08 SEP 24 AM 9:52
QUEENS COUNTY CLERK

Present: HONORABLE VALERIE BRATHWAITE NELSON IA Part
Justice

<u>DORA S. ROBINSON, et al., etc.,</u>	x	Index	
		Number	<u>19630</u> 2006
Plaintiffs,		Motion	
- against -		Date	<u>June 3,</u> 2008
ROBERT LAWRENCE, et al.,		Motion	
Defendants.		Cal. Number	<u>24, 25 & 26</u>
	x	Motion Seq. No.	<u>8, 9 & 10</u>

The following papers numbered 1 to 30 read on this motion by Financial Freedom Senior Funding (FFSF), a subsidiary of IndyMac Bank, F.S.B., to dismiss the complaint pursuant to CPLR 3211(a)(3); motion by plaintiffs for leave to serve an amended summons and complaint; and motion by FFSF to vacate the note of issue.

	<u>Papers</u> <u>Numbered</u>
Notices of Motions - Affidavits - Exhibits	1-5, 6-10, 11-14
Answering Affidavits - Exhibits	15-16, 17-21, 22-27
Reply Affidavits	28, 29-30

Upon the foregoing papers it is ordered that the motions are decided as follows:

In this action, plaintiffs seek to recover monies from a reverse mortgage loan on property located at 117-02 231st Street, in Cambria Heights, New York. The submissions indicate that, at one time, a loan was obtained by Dessie Lee Stewart, now deceased (decedent), through her attorney Robert Lawrence. FFSF issued a reverse mortgage loan on or about September 8, 2004. FFSF has since commenced a foreclosure action to recover monies owed on the loan. In bringing the instant action, plaintiffs allege that they are the sole heirs of decedent, however, they admit that they are not personal representatives of the Estate. Defendants move to


dismiss the action on the ground that plaintiffs do not have the legal capacity to commence an action on behalf of the estate. Plaintiffs oppose the motion.

It is well established in New York that a person who has not obtained letters as personal representative lacks standing or the legal capacity to commence an action on behalf of an estate (see EPTL § 11-3.2; Matter of Peters v Sotheyby's Inc., 34 AD3d 29 [2006]), (to recover a painting on behalf of an estate, the petitioner is required to establish, among other things, "that she is the duly appointed representative of decedent's estate"). Here, since plaintiffs are admittedly not the personal representatives, executors or administrators of decedent's estate they have no standing to sue (see Brandon v Columbian Mut. Life Ins. Co., 264 AD2d 436 [1999]).

It is the duty of only the executors or administrators "to recover the property of the estate," and "legatees, creditors and distributees ... have no independent cause of action, either in their own right or the right of the estate" (McQuaid v Perot, 223 NY 75, 79 [1918]; see also Palladino v Metropolitan Life Ins. Co., 188 AD2d 708 [1992]). It is noted that even where a plaintiff's application seeking appointment is pending, the said plaintiff has no standing to commence an action on behalf of the deceased (see Brandon v Columbian Mut. Life Ins. Co., supra). Therefore, the motion to dismiss the complaint is granted.

The remaining motions are denied as moot based upon the branch of the court's decision dismissing the complaint.

Dated: 9/19/08


VALERIE BRATHWAITE NELSON, J.S.C.

QUEENS COUNTY CLERK
FILED
08 SEP 24 AM 9:52