

HSBC MORTGAGE CORPORATION (USA),

Plaintiff,

-against-

MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC., AS NOMINEE FOR  
HSBC MORTGAGE CORPORATION (USA),  
"JOHN DOE #1-5" and "JANE DOE #1-5", said names  
being fictitious, it being the intention of Plaintiff to  
designate any and all occupants, tenants, persons, or corporations,  
if any, having or claiming an interest in or lien upon the  
premises being foreclosed herein,

Defendants,

**DECISION/ORDER**

**Present:**  
**Hon. Laura G. Douglas**  
**J.S.C.**

Recitation, as required by Rule 2219(a) of the C.P.L.R., of the papers considered in the review of this motion to strike plaintiff's complaint or compelling production of certain discovery and related relief:

<u>Papers</u>	<u>Numbered</u>
Notice of Motion by Defendant Affirmation of R. David Marquez, Esq. dated June 12, 2014 in Support of Motion, and Exhibits ("A" through "I").....	1
Affirmation of Andre' S. Haynes, Esq. dated June 23, 2014 in Opposition to Motion and Exhibits ("A" through "L").....	2
Reply Affirmation of R. David Marquez, Esq. dated June 25, 2014.....	3

*Upon the foregoing papers and after due deliberation, the Decision/Order on this motion is as follows:*

Defendant ) seeks an order striking the complaint as a penalty for the plaintiff's purported failure to furnish certain discovery or compelling production of such discovery. The motion is granted solely to the extent ordered below, and is otherwise denied.

The plaintiff seeks to foreclose a mortgage executed by )'s affirmative defenses

include specified fraud in procuring the mortgage. By Notice to Produce dated July 24, 2012 and Notice for Discovery and Inspection dated August 24, 2012 [redacted] demanded production of the “original mortgage file and/or collateral file in its entirety, containing all documents executed by the Defendant(s), including all original loan applications, bank personnel memos, handwritten notes, comments, drafts, written authorizations and/or other writings drafted by bank personnel of the lender or the Defendant(s) prior to, contemporaneous with and subsequent to the closing of the mortgage and note . . . “. The plaintiff objected to this demand as “vague, overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. By letter dated May 7, 2014, plaintiff’s counsel stated that “although Plaintiff was prepared to produce certain original documents for inspection, we would not produce the entire original collateral and mortgage files”. The plaintiff appears to have produced certain documents.

The Court finds that [redacted]’s discovery demands are particular, in that they pertain specifically to the one exact mortgage underlying the plaintiff’s claims. The plaintiff has not explained how it would be unduly burdensome to produce such file(s) pertaining to the very mortgage which it seeks to foreclose. The plaintiff has not sought a protective order shielding these files from disclosure. These discovery demands are not palpably improper, but are calculated to lead to discovery material and necessary to defend against the plaintiff’s claims and/or prosecute the affirmative defenses alleged by [redacted] (see *Aubrey Equities, Inc. v. SMZH 73<sup>rd</sup> Associates*, 212 AD2d 397 [1<sup>st</sup> Dept 1995], *Gates v. Easy Living Homes, Inc.*, 29 AD3d 733 [2<sup>nd</sup> Dept 2006], and *Downey Savings and Loan Association, F. A. v. Pinto-Bedoya*, 24 Misc3d 1214 [Sup Ct, Kings County 2009]).

The plaintiff shall permit inspection of original documents at the Bronx County courthouse or at plaintiff’s counsel’s New York office.

The absence of a good faith affirmation in accordance with 22 NYCRR 202.7 is not fatal because any effort to resolve this discovery dispute outside of court would have been futile (see *Baulieu v. Ardsley Associates L. P.*, 84 AD3d 666 [1<sup>st</sup> Dept 2011]).

Accordingly, it is hereby

ORDERED, that the plaintiff shall furnish the contents of the collateral file/mortgage loan file and servicing records for the underlying mortgage and/or an affidavit from someone with personal knowledge detailing the search conducted and chain of custody should any of the requested items be unavailable; and

it is further

ORDERED, that the plaintiff shall make available for inspection the original documents exchanged through discovery at the Bronx County courthouse or at plaintiff's counsel's New York office; and it is further

ORDERED, that the parties shall complete all depositions no later than June 30, 2016.

This constitutes the Decision and Order of this Court.

DATED:

4-12-16  
Bronx, New York

LD  
HON. LAURA G. DOUGLAS  
J.S.C.