

## Allonge Definition Page

### Allonge [ə-ĬÄ nj, a-lòzh] n

[French, literally, something that lengthens, from Old French *alonge*, from *alongier* to make long, ultimately from Latin *longus* long]

: a paper attached to an instrument to provide space for additional endorsements

: [rider](#) *NOTE: Under Uniform Commercial Code section 3-202(2), an allonge must be so firmly affixed to the instrument that it becomes part of it in order for the endorsements to be valid. Endorsements on an allonge are often considered invalid if there is still room on the instrument for endorsements.*

### 1109.75 Securitization.

“(A) Notwithstanding any other provision of law, to the extent set forth in the transaction documents relating to a securitization:

(1) Any property, assets, or rights purported to be transferred, in whole or in part, in a securitization shall be deemed to no longer be the property, assets, or rights of the transferor.

(2) A transferor in a securitization, the transferor's creditors, or a bankruptcy trustee, receiver, or similar person in an insolvency proceeding involving the transferor shall have no rights whatsoever to reacquire, reclaim, recover, redeem, or recharacterize as property of the transferor any property, assets, or rights purported to be transferred, in whole or in part, by the transferor.

(3) In the event of the transferor's bankruptcy, receivership, or other insolvency proceedings, the property, assets, or rights purported to have been transferred by the transferor, in whole or in part, in a securitization shall not be deemed to be part of the transferor's property, assets, rights, or estate.

(B) Nothing contained in this section shall be deemed to require any securitization transaction to be treated as a sale for federal or state tax purposes or to preclude the treatment of any securitization transaction as a debt for federal or state tax purposes.

(C) As used in this section, "securitization" means a transfer of financial assets by a financial institution insured by the federal deposit insurance corporation (FDIC) to a special purpose entity established to issue securities supported by the financial assets to investors. “

Effective Date: 07-01-2001

Source: <http://codes.ohio.gov/orc/1109.75>

### Cases.

Pacific Concrete F.C.U.V.Kauanoae, 62 Haw. 334, 614 P.2d 936 (1980),

GE Capital Hawaii, Inc. v. Yonenaka 25 P.3d 807, 96 Hawaii 32, (Hawaii App 2001),'

Fooks v. Norwich Housing Authority 28 Conn. l. Rptr. 371, (Conn. Super. 20DD), and

Town of Brookfield v. Candlewood Shores Estates, Inc. 513 A.2d 1218, 201 Conn. l (1986).

Solon v. Godbole, 163 Ill. App. 3d 845, 114 Ill. Dec. 890, 516 N.E.2d 1045 (3Dist. 1987).

Staff Mortgage & Inv. Corp., 550 F.2d 1228 (9th Cir 1977). "Under the Uniform Commercial Code, the only notice sufficient to inform all interested parties that a security interest in instruments has been perfected is actual possession by the secured party, his agent or bailee."

### New Jersey

### New York

"An "allonge" is defined as "[a] slip of paper sometimes attached to a negotiable instrument for the purpose of receiving further endorsements when the original paper is filled with endorsements." Black's Law Dictionary (8th ed. 2004)."

### Cases Involving Allonge

SCR Joint Venture, L.P. v. Warshawsky, 06 CV 3532 (ADS)(MLO), UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK, 2007 U.S. Dist. LEXIS 98643, June 6, 2007, Decided, June 6, 2007, Filed, Reconsideration denied by SCR Joint Venture, L.P. v. Warshawsky, 2007 U.S. Dist. LEXIS 98646 (E.D.N.Y., Aug. 17, 2007) Affirmed by, in part, Vacated by, in part, Remanded by SCR Joint Venture L.P. v. Warshawsky, 559 F.3d 133, 2009 U.S. App. LEXIS 5159 (2d Cir. N.Y., 2009)

### Allonge defined and other cases

"The indorsement may be on the instrument itself, or it may be on "a paper affixed to the instrument." Id. Such a paper is called an "allonge", defined as "[a] slip of paper sometimes attached to a negotiable instrument for the purpose of receiving further indorsements when the original paper is filled with indorsements." See Black's Law Dictionary at 88 (9th Ed. 2009)."

Kemp v. Countrywide Home Loans, Inc. (In re Kemp), Case No. 08-18700-JHW, Adversary No. 08-2448, UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF NEW JERSEY, 2010 Bankr. LEXIS 4085,

November 16, 2010, Decided, November 16, 2010,

## Cases Dismissed for Lack of Standing In NJ & NY

### **U.S. Bank v. Dellarmo** (Standing-NY Sup.Ct.)(4/12)

"In a mortgage foreclosure action, a plaintiff has standing where it is both the holder or assignee of the subject mortgage and the holder or assignee of the underlying note at the time the action is commenced" ([Bank of N.Y. v Silverberg, 86 AD3d 274, 279](#); see [Countrywide Home Loans, Inc. v Gress, 68 AD3d 709](#)). Where a defendant raises the issue of standing, the plaintiff must prove its standing to be entitled to relief (see [CitiMortgage, Inc. v Rosenthal, 88 AD3d 759](#); [U.S. Bank, N.A. v Collymore, 68 AD3d 752, 753](#)). Moreover, while assignment of a promissory note also effectuates assignment of the mortgage (see [Bank of N.Y. Silverberg, 86 AD3d at 280](#); [U.S. Bank, N.A. v Collymore, 68 AD3d at 753-754](#); [Mortgage Elec. Registration Sys., Inc. v Cookley,](#) ), the converse is not true: since a mortgage is merely security for a debt, it cannot exist independently of the debt, and thus, a transfer or assignment of only the mortgage without the debt is a nullity and no interest is acquired by it (see [Deutsche Bank Natl. Trust Co. v Barnett, 88 AD3d 636](#); [Bank of N.Y. v Silverberg, 86 AD3d at 280](#)). The failure to record an assignment prior to the commencement of the action is not necessarily fatal since "an assignment of a note and mortgage need not be in writing and can be effectuated by physical delivery" ([Bank of N.Y. v Silverberg, 86 AD3d at 280](#); see [Deutsche Bank Natl. Trust Co. v Barnett, 88 AD3d 636](#); [U.S. Bank, N.A. v Collymore, 68 AD3d at 754](#); [LaSalle Bank Natl. Assn. v Ahearn, 59 AD3d 911, 912](#)).

**Wells Fargo v McNee**(11/11) As the First Department held in [Katz v. East-Ville Realty Co., \(249 AD2d 243, 243\)](#), a "[p]laintiff's attempt to foreclose upon a mortgage in which he had no legal or equitable interest [is] without foundation in law or fact" (see [Kluge v. Fugazy, 145 AD2d 537](#)). Hence, Wells Fargo's attempt to foreclose upon the subject mortgage must be denied, the complaint dismissed, and McNee's cross-motion(s) to dismiss for lack of standing pursuant to CPLR 3211(a)(3) granted.

**Downey v. Trujillo** (8/11)(Schack) **Dismissed with prejudice.** Schack was angered after lawyer Margaret Carucci said in a sworn affidavit that a Downey Savings & Loan officer on Dec. 24, 2010 claimed to have personally reviewed and could vouch for the accuracy of the paperwork underlying Trujillo's foreclosure -- although Downey had long ceased to exist.

**Deutsche Bank v. Mitchell**(8/11) **Summary judgment reversed - sale vacated.** The assignment was not perfected until after the filing of the complaint, and plaintiff presented no evidence of having possessed the underlying note prior to filing the complaint. If plaintiff did not have the note when it filed the original complaint, it lacked standing to do so, and it could not obtain standing by filing an amended complaint.

We vacate the sheriff's sale, the final judgment and the order granting summary judgment and remand to the trial court.

[Deutsche Bank v. Francis](#) (Dismissed With Prejudice-Schack)(3/11): I discovered that there is no record of plaintiff DEUTSCHE BANK ever owning the subject mortgage and note.

Therefore, with plaintiff DEUTSCHE BANK lacking standing, the instant action is dismissed with prejudice and the notice of pendency cancelled.

A want of "standing to sue," in other words, is just another way of saying that this particular plaintiff is not involved in a genuine controversy, and a simple syllogism takes us from there to a "jurisdictional" dismissal: (1) the courts have jurisdiction only over controversies; (2) a plaintiff found to lack "standing" is not involved in a controversy; and (3) the courts therefore have no jurisdiction of the case when such a plaintiff purports to bring it.

[Johnston v. HSBC\\*\\*](#) (complaint), (extrinsic fraud, real party) (3/11)

**Extrinsic Fraud:** Because the fraud is extrinsic in nature, HSBC is precluded from raising the doctrine of res judicata --as a defense against this Courts obligation to verify first and foremost that the claimant has federal jurisdiction "real party in interest" status.

**Real Party in interest:** HSBC MORTGAGE CORP (USA) (hereinafter, "HSBC") does not qualify as a "real party of interest" pursuant to Rule 17 of the Federal Rules of Civil Procedure, which provides: "An action must be prosecuted in the name of the real party in interest." The purpose of this rule is to require that an action be brought "in the name of the party who possesses the substantive right being asserted under the applicable law...." 6A WRIGHT, MILLER & KANE, FEDERAL PRACTICE AND PROCEDURE: CIVIL 2d § 1541 (1990) ("WRIGHT").

[ALE v. U.S. Bank](#) (Expunge Mortgage and Assignment\*)(1/11)

[American Brokers Conduit v. ZAMALLOA](#) - Judge SCHACK 11Sep2007

[EMC Mortgage v. Wink](#) - (1/07) MERS, which is not itself the owner and holder of the note and mortgage, does not have the authority to assign the ownership of the note and mortgage to plaintiff. Judgment of foreclosure and sale is denied

[Countrywide Home Loans, Inc. v Taylor](#) - Mayer, J., Supreme Court, Suffolk County / Sept. 2007

[American Brokers Conduit v. ZAMALLOA](#) - Judge SCHACK 28Jan2008

[Aurora Loan Services v. MACPHERSON](#) - Judge FARNETI 11Mar2008

[Bank of New York v. SINGH](#) - Judge KURTZ 14Dec2007

[Bank of New York v. TORRES](#) - Judge COSTELLO 11Mar2008

[Bank of New York v. OROSCO](#) - Judge SCHACK 19Nov2007

[CitiMortgage Inc. v. BROWN](#) - Judge FARNETI 13Mar2008

[Countrywide Mortgage v. BERLIUK](#) - Judge COSTELLO 13Mar2008

[Deutsche Bank v. Barnes-Judgment Entry](#)

[Deutsche Bank v. Barnes-Withdrawal of Objections and Motion to Dismiss](#)

[Deutsche Bank v. ALEMANY Judge COSTELLO 07Jan2008](#)

[Deutsche Bank v. Benjamin CRUZ - JudgeKURTZ 21May2008](#)

[Deutsche Bank v. Yobanna CRUZ - Judge KURTZ 21May2008](#)

[Deutsche Bank v. CABAROY - Judge COSTELLO 02Apr2008](#)

[he Bank v. CASTELLANOS / 2007NYSlipOp50978U/- Judge SCHACK 11May2007](#)

[HE Bank v. CASTELLANOS/ 2008NYSlipOp50033U/ - Judge SCHACK 14Jan2008](#)

[HSBC v. Valentin - Judge SCHACK calls them liars and dismisses WITH prejudice \\*\\*](#)

[Deutsche Bank v. CLOUDEN / 2007NYSlipOp51767U/ Judge SCHACK 18Sep2007](#)

[Deutsche Bank v. EZAGUI - Judge SCHACK 21Dec2007](#)

[Deutsche Bank v. GRANT - Judge SCHACK 25Apr2008](#)

[Deutsche Bank v. HARRIS - Judge SCHACK 05Feb2008](#)

[Deutsche Bank v. LaCrosse,Cede,DTC Complaint](#)

[Deutsche Bank v. NICHOLLS - Judge KURTZ 21May2008](#)

[Deutsche Bank v. RYAN - Judge KURTZ 29Jan2008](#)

[Deutsche Bank v. SAMPSON - Judge KURTZ 16Jan2008](#)

[Deutsche v. Marche - Order to Show Cause to VACATE Judgment of Foreclosure - 11June2009](#)

[GMAC Mortgage LLC v. MATTHEWS - Judge KURTZ 10Jan2008](#)

[GMAC Mortgage LLC v. SERAFINE - Judge COSTELLO 08Jan2008](#)

[HSBC Bank USA NA v. CIPRIANI Judge COSTELLO 08Jan2008](#)

[HSBC Bank USA NA v. JACK - Judge COSTELLO 02Apr2008](#)

[IndyMac Bank FSB v. RODNEY-ROSS - Judge KURTZ 15Jan2008](#)

[LaSalle Bank NA v. CHARLEUS - Judge KURTZ 03Jan2008](#)

[LaSalle Bank NA v. SMALLS - Judge KURTZ 03Jan2008](#)

[PHH Mortgage Corp v. BARBER - Judge KURTZ 15Jan2008](#)

[Property Asset Management v. HUAYTA 05Dec2007](#)

[Rivera, In Re](#)

[Services LLC v. SATTAR / 2007NYSlipOp51895U/ - Judge SCHACK 09Oct2007](#)

[U.S. Bank NA v. AUGUSTE - Judge KURTZ 27Nov2007](#)

[U.S. Bank v. Emmanuel](#) - (Judge Schack May 2010) Dismissed with prejudice. "foreclosure of a mortgage may not be brought by one who has no title to it and absent transfer of the debt, the assignment of the mortgage is a nullity".

[U.S. Bank NA v. GRANT - Judge KURTZ 14Dec2007](#)

[U.S. Bank NA v. ROUNDTREE - Judge BURKE 11Oct2007](#)

[U.S. Bank NA v. VILLARUEL - Judge KURTZ 01Feb2008](#)

[Wells Fargo Bank NA v. HAMPTON - Judge KURTZ 03Jan2008](#)

[Wells Fargo, Litton Loan v. Farmer WITH PREJUDICE Judge Schack June2008](#)

Plaintiff has renewed its application for an order of reference for the subject premises, but the papers submitted fail to cure the defects enumerated in my prior decision and order. The purported plaintiff, WELLS FARGO, does not own the instant mortgage loan. Therefore, the instant matter is dismissed with prejudice.

- **Two invalid assignments** of the instant mortgage and note took place, with ARGENT assigning the note and mortgage to AMERIQUEST, and then AMERIQUEST assigning the note and mortgage to plaintiff WELLS FARGO. Both of these assignments were not recorded for more than fourteen months, until February 21, 2006, when they were both recorded at that same time.

**[Wells Fargo v. Reyes WITH PREJUDICE, Fraud on Court & Sanctions Judge Schack June2008](#) **No defendant answered in this foreclosure action.****

WELLS FARGO BANK, NATIONAL ASSOCIATION AS TRUSTEE AND CUSTODIAN FOR MORGAN STANLEY ABS CAPITAL1 INC., MSAC 2007-HE4, lacks standing and has never been the mortgagee in this foreclosure action, the instant complaint, Index No. 5516/08, is dismissed with prejudice; and it is further ORDERED, that the Notice of Pendency filed with the Kings County Clerk on February 21, 2008, by purported plaintiff, WELLS FARGO BANK, NATIONAL ASSOCIATION AS TRUSTEE AND CUSTODIAN FOR MORGAN STANLEY ABS CAPITAL1 INC., MSAC 2007-HE4, in an action to foreclose a mortgage for real property located at 379 Lincoln Avenue, Brooklyn New York (Block 4173, Lot 6, County of Kings), is cancelled.

**[Deutsche Bank v. Peabody Judge Nolan \(Regulation Z\)](#)**

**[Indymac Bank,FSB v. Boyd](#)** - Schack J. January 2009

**[Indymac Bank, FSB v. Bethley](#)** - Schack, J. February 2009 (The tale of many hats)

**[Indymac Bank, v. Yano-Horoski](#)** -Judge Blasts Bank's Foreclosure Conduct and Cancels Mortgage.

**[LaSalle Bank Natl. Assn. v Ahearn](#)** - Appellate Division, Third Department (*Pro Se*)\

**[NEW JERSEY COURT DISMISSES FORECLOSURE FILED BY DEUTSCHE BANK FOR FAILURE TO PROVIDE DISCOVERY AS TO OWNER AND HOLDER OF NOTE, SECURITIZED TRUST DOCUMENTS, AND OTHER DOCUMENTS DEMANDED BY BORROWERS](#)**

[HSBC Bank USA v Miller](#) 2009 NY Slip Op 29444 / Decided on October 29, 2009 / Meddaugh, J.

[Lasalle Bank v. Smith, MERS](#) (Judge Schack - March 22, 2010)

[Wells Fargo Bank, Americas Servicing Company, MERS v Hunte](#) (Judge Schack, Apr.14, 2010/**Dismissed with prejudice, possible sanctions.**) (The court "discovered that WELLS FARGO executed a satisfaction of the instant mortgage more than ten months ago." "The Court is gravely concerned that: it expended scarce resources on an action that should have been discontinued." "the Court, in its discretion may impose financial sanctions upon any party or attorney in a civil action or proceeding who engages in frivolous conduct.")

[Chase v. Johnson](#) (Judge Schack May 4, 2010) (**vacated judgment of foreclosure and sale with prejudice as plaintiff lacked standing.**)

[OneWest Bank v. Cullen](#) (Judge Zwack - March 3, 2010) (The Court finds that OneWest has failed to establish it has standing and dismissed the complaint.)

[ARGENT v. Maitland](#) (Aug. 2010) (Judge Schack) Plaintiff's counsel never notified the Court that the mortgage had been satisfied and failed to discontinue the instant action with prejudice. **I discovered that the mortgage had been satisfied by personally searching the Automated City Register Information System (ACRIS) website of the Office of the City Register, New York City Department of Finance. AHMSI's President and Chief Executive Officer or its Executive Vice President, Chief Legal Officer and Secretary Jordan D. Dorchuck, Esq., its counsel, Melissa A. Sposato, Esq. and her firm, Jordan S. Katz, P.C., will be given an opportunity to be heard as to why this Court should not sanction them for making a "frivolous motion,"**

[MERS as Nominee for U.S. Bank v. Munoz](#) - (ORDER TO SHOW CAUSE)

**Mortgage Electronic Registration System** as Nominee for **US Bank**, and any of its attorneys, agents, successors and assignees, be and are hereby restrained from implementing the closing of title on any third party sale of the premises and restrained from evicting the family from the premises.

[LLP v. Sabine](#) (8/2010) "the assignment produced by LPP is insufficient to demonstrate it has standing as (1) **MERS has no ownership rights in the note and thus cannot assign it**; (2) the language of the assignment of the mortgage does not evidence **an** intent to assign the underlying note, (3) the assignment arises out of a purchase agreement with an entity who is not a party to this action, and (4) the provision of mortgage document relied on by LPP does not give MERS the authority to assign the mortgage or the note.

[Wells Fargo Bank, N.A. v Hughes](#) (1/10) The terms of the proposed **modification agreement**, particularly but not exclusively the inclusion of an adjustable rate component, are unacceptable to this court. "The above matter is hereby **dismissed without prejudice**; and it is further ordered, that in the event Wells Fargo commences a new action in foreclosure with respect to this borrower and the premises at issue herein, no additional costs or attorney fees will be allowed, absent good cause shown.



**BACKFIRE! Emigrant Mtge. Co. Inc. v Corcione**: (7/10) "**unconscionable, unreasonable [and] overreaching" mortgage agreement.** For all of the foregoing reasons, it is, therefore ordered, adjudged and decreed that plaintiff's application for summary judgment and appointment of a referee is denied; and it is further ordered, adjudged and decreed that plaintiff, its successors, assigns and others are forever barred, foreclosed and prohibited from demanding, collecting or attempting to collect, directly or indirectly, any and all of the sums in this proceeding delineated as interest, default interest, attorney's fees, legal fees, costs, disbursements, advances or any sums other than the principal balance, that may have accrued from May 1, 2008 up to the date of this order; and it is further ordered, adjudged and decreed that defendants recover judgment against plaintiff Emigrant Mortgage Co. Inc., in the principal sum of \$100.000.00 as damages for what he said was an "**unconscionable, unreasonable [and] overreaching" mortgage agreement.**

**Beneficial v. Steele\*\*\*** (Judge Spinner)(Jan 7/11) An action claiming foreclosure of a mortgage is a suit in equity, Jamaica Savings Bank v. M.S. Investment Co. 274 NY 215 (1937), and the very commencement of the proceeding invokes the equity jurisdiction of the Supreme Court. Thus, in order to obtain equitable relief, the applicant must come before the Court with clean hands, else such relief will be denied. Thus, where a party comes before the Court and is shown to have acted in a manner which is offensive to good conscience, fairness and justice, that party will be completely without recourse in a court of equity, no matter what his legal rights may be, York v. Searles 97 AD 331 92nd Dept. 1904), aff'd 189 NY 573 (1907). Stated a bit differently, in order to obtain equity, one must do equity. Here, it is irrefutable that Defendant SUSAN STEELE was not a party to the Loan Agreement and certainly did not execute the same. It is equally indubitable that Defendant STEPHEN STEELE did not execute the Loan Agreement that has been presented on this application. Nonetheless, Plaintiff has vigorously prosecuted this action, demanding foreclosure of the mortgage as well as money damages against both named Defendants. Under these circumstances, the Court is compelled to conduct a hearing to determine whether or not Plaintiff has proceeded in good faith and what sanction, if any should be imposed should the Court find a lack of good faith. (Id.)