

assignment was properly recorded in the public records, MERS had not been given any interest in the underlying note by the lender (see *Bank of N.Y. v Silverberg*, 86 AD3d 274, 283 [2011]).

However, the complaint and the documents annexed to plaintiff's motion establish that an assignment of the note had been effectuated by physical delivery of the note before this action was commenced (see *id.* at 280; *Collymore*, 68 AD3d at 754).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MAY 22, 2012



CLERK