

Second Dept.

Mortgage Foreclosure/Judicial Activism/Judge Admonished/Standing: Plaintiff bank foreclosed a mortgage. Defendant defaulted and plaintiff moved for an order of reference. The Supreme Court Kings County denied, and, after finding that plaintiff had used a “robo signer” dismissed the action sua sponte based upon standing, fined plaintiff 10K and plaintiff's attorney 5K. The Second Dept. reversed...“We note that in *U.S. Bank, N.A. v Emmanuel* (83 AD3d 1047), this Court reversed an order issued by the same Justice assigned to this case which similarly directed dismissal of a complaint in a mortgage foreclosure action, sua sponte, for lack of standing. In *Emmanuel*, we held, as we reiterate here, that a mortgagee's alleged lack of standing is not an “extraordinary circumstance” that warrants sua sponte dismissal of a foreclosure complaint. Indeed, lack of standing is an affirmative defense which is waived if not raised by the defendant in either an answer or a pre-answer motion to dismiss (see *Wells Fargo Bank Minn., N.A. v Mastropaolo*, 42 AD3d 239, 242). Since *Emmanuel* was decided approximately two months before the Supreme Court improperly directed dismissal of the complaint in the instant action, sua sponte, for lack of standing, we take this opportunity to remind the Justice of his obligation to remain abreast of and be guided [*3]by binding precedent. We also caution the Justice that his independent internet investigation of the plaintiff's standing that included newspaper articles and other materials that fall short of what may be judicially noticed, and which was conducted without providing notice or an opportunity to be heard by any party (see *HSBC Bank USA, N.A. v Taher*, 32 Misc 3d 1208[A], 2011 NY Slip Op 51208 [U], *4 [Sup Ct, King County]), was improper and should not be repeated.” *HSBC Bank USA, N.A. v Taher*, Appellate Division, Second Department, 2013 NY Slip Op 01806 [opinion](#)