

**M E M O R A N D U M**

SUPREME COURT QUEENS COUNTY  
CIVIL TERM PART 2

**HON. ALLAN B. WEISS**

CHASE HOME FINANCE, LLC successor, by  
merger to CHASE MANHATTAN MORTGAGE  
CORPORATION

Plaintiff,

-against-

GIWAOSAGIE JIMOH, ET AL.

Defendants.

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Index No.: 25894/05

Motion Date: 2/7/07

Motion Cal. No: 4

Motion Seq. No: 2

Plaintiff commenced this foreclosure action against, inter alia, the defendant, GIWAOSAGIE JIMOH etc., the mortgagor on the mortgage sought to be foreclosed, and Steven C. Okenwa, the holder of two subordinate mortgages given to him by the defendant, GIWAOSAGIE JIMOH etc. The defendant, Okenwa, appeared and served an answer containing, inter alia, two affirmative defenses and a counterclaim against the plaintiff, but the co-defendant mortgagor defaulted.

In April, 2006, the plaintiff moved by Notice of Motion to strike defendant's, Steve C. Okenwa's, affirmative defenses and counter claim and for summary judgment in its favor as against the defendant, Steve C. Okenwa's, a default judgment as against the defendant, mortgagor, appointment of a referee to ascertain and compute the amount due to the plaintiff and

amendment of the caption. The motion was granted without opposition. An Order and Judgment was entered on April 27, 2007.

The plaintiff now moves to confirm the referee's report, dated May 24, 2006 and for a judgment of foreclosure and sale. The defendant, Steve C. Okenwa, cross-moves for inclusion of a decretal paragraph in the judgment of Foreclosure and Sale to be entered herein directing the referee to apply any surplus moneys which may remain to satisfy his two subordinate mortgages.

Real Property Actions Proceedings Law (RPAPL) §§ 1351(3) and 1354(3) provide as follows.

RPAPL 1351 "3. If it appears to the satisfaction of the court that there exists no more than one other mortgage on the premises [FN1] which is then due and which is subordinate only to the plaintiff's mortgage but is entitled to priority over all other liens and encumbrances except those described in subdivision 2 of section 1354, upon motion of the holder of such mortgage made without valid objection of any other party, the final judgment may direct payment of the subordinate mortgage debt from the proceeds in accordance with subdivision 3 of section 1354.

RPAPL 1354 "3. The officer conducting the sale after fully complying with the provisions of subdivisions one and two of this section and if the judgment of sale has so directed shall pay to the holder of any subordinate mortgage or his attorney from the then remaining proceeds the amount then due on such subordinate mortgage, or so much as the then remaining proceeds will pay and take the receipt of the holder, or his attorney for the amount so paid, and file the same with his report of sale."

In support of his motion, the defendant, Okenwa, submitted his affidavit together with his computation of the amounts due and owing on the two mortgages, copies of the two mortgages and

proof of filing thereof on December 27, 2004 and May 31, 2005, in the Office of the City Register. However, the defendant has failed to offer any evidence from which the court may determine that these subordinate mortgages are next in priority after the mortgage held by plaintiff (RPAPL 1351[3]) and failed to explain the reason for his failure to cross move for an order directing the calculation of the amount due and owing with respect to the subordinate mortgages, at the time plaintiff sought the appointment of the Referee to compute the amount due and owing plaintiff. Under such circumstances, the cross motion is denied without prejudice to the filing of a notice of claim by defendant, Steve C. Okenwa, pursuant to RPAPL § 1361.

The plaintiff's motion is granted without opposition.

Settle Judgment.

Dated: March 5, 2007  
D# 29

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J. S. C.