

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF THE BRONX

-----X
**U.S. BANK NATIONAL ASSOCIATION, AS
TRUSTEE FOR THE REGISTERED HOLDERS OF
WELLS FARGO COMMERCIAL MORTGAGE
SECURITIES, INC., MULTIFAMILY
MORTGAGE PASS-THROUGH CERTIFICATES,
SERIES 2018,**

Plaintiff,

- against -

Index No. **808519/22E**

Hon. **FIDEL E. GOMEZ**
Justice

**FRANTOR REALTY CORP, THE BANK OF NEW
YORK MELLON, AS COLLATERAL AGENT AND
CUSTODIAN FOR THE NYCTL 2021-A TRUST,
NYC BUREAU OF HIGHWAY OPERATIONS,
COMMISSIONER OF LABOR OF STATE OF NEW
YORK, ANA TORRES, FRANK TORRES, JR.,
AND FRANK TORRES A/K/A FRANK TORRES,
SR., AND JOHN DOE NO. 1 THROUGH JOHN
DOE NO. XXX, THE LAST THIRTY NAMES
BEING FICTITIOUS AND UNKNOWN TO
PLAINTIFF, THE PERSONS OR PARTIES
INTENDED BEING THE TENANTS, OCCUPANTS,
PERSONS OR CORPORATIONS, IF ANY, HAVING
OR CLAIMING AN INTEREST IN OR LIEN UPON
THE PREMISES DESCRIBED IN THE COMPLAINT,**

Defendant.

-----X
The following papers numbered 1 to 2, Read on this motion noticed
on 9/12/22, and duly submitted as no. 1 on the Motion Calendar
of 9/12/22,

	<u>PAPERS NUMBERED</u>	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	1	
Answering Affidavit and Exhibits		
Replying Affidavit and Exhibits		
Notice of Cross-Motion - Affidavits and Exhibits		
Pleadings - Exhibit		
Stipulation(s) - Referee's Report - Minutes		

Filed Papers-Order Appointing Receiver	2	
Memorandum of Law		

Plaintiff's motion is decided in accordance with the Decision and Order annexed hereto.

Dated: 9/16/2022

Hon.

FIDEL E GOMEZ, AJSC

1. CHECK ONE

CASE DISPOSED X NON-FINAL
DISPOSITION

2. MOTION/CROSS-MOTION
IS

X GRANTED (MOTION)
 DENIED (CROSS-MOTION)

3. CHECK IF
APPROPRIATE.

GRANTED IN PART
 OTHER
 SETTLE ORDER
 SUBMIT ORDER
 DO NOT POST
 FIDUCIARY APPOINTMENT
 REFEREE APPOINTMENT
 NEXT APPEARANCE DATE:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----x

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE
FOR THE REGISTERED HOLDERS OF WELLS FARGO **DECISION AND ORDER**
COMMERCIAL MORTGAGE SECURITIES, INC.,
MULTIFAMILY MORTGAGE PASS-THROUGH Index No: 808519/22E
CERTIFICATES, SERIES 2018-SB46,

Plaintiff(s),

- against -

FRANTOR REALTY CORP, THE BANK OF NEW YORK
MELLON, AS COLLATERAL AGENT AND CUSTODIAN
FOR THE NYCTL 2021-A TRUST, NYC BUREAU OF
HIGHWAY OPERATIONS, COMMISSIONER OF LABOR OF
STATE OF NEW YORK, ANA TORRES, FRANK TORRES,
JR., AND FRANK TORRES A/K/A FRANK TORRES,
SR., AND JOHN DOE NO. 1 THROUGH JOHN DOE NO.
XXX, THE LAST THIRTY NAMES BEING FICTITIOUS
AND UNKNOWN TO PLAINTIFF, THE PERSONS OR
PARTIES INTENDED BEING THE TENANTS,
OCCUPANTS, PERSONS OR CORPORATIONS, IF ANY,
HAVING OR CLAIMING AN INTEREST IN OR LIEN
UPON THE PREMISES DESCRIBED IN THE
COMPLAINT,

Defendant(s),

-----x

In this action for foreclosure on a mortgage and the sale of
the real property pledged as security, plaintiff moves seeking an
order pursuant to RPL § 254(10) appointing a receiver to preserve
the premises secured by the mortgage in this action.

For the reasons that follow hereinafter, plaintiff's motion is
granted, on default and without opposition.

The instant action is for foreclosure on a mortgage and the sale of the real property pledged as security. The complaint alleges that on August 18, 2017, defendant FRANTOR REALTY CORP. (Frantor) executed two notes, wherein it agreed to repay non-party Brick Bronx Capital LLC (Brick) a loan totaling \$3,422,000. On the same day, Frantor executed two mortgages, wherein it pledged property located at 141-153 Lincoln Avenue, Bronx, NY 10454 (141-153), as security for the note. On October 27, 2017, Frantor executed a note, whereby concomitantly, the note between Frantor and Brick was assigned to non-party CBRE Capital Markets, Inc. (CBRE), and wherein Frantor agreed to pay CBRE the loan made to Frantor by Brick. On the same day, Frantor executed a mortgage consolidating the prior mortgages in favor of Brick and issuing a new consolidated mortgage to CBRE. On October 27, 2017, defendants FRANK TORRES, JR. (Torres Jr.) and FRANK TORRES A/K/A FRANK TORRES, SR. (Torres Sr.) executed a guaranty wherein they agreed to guarantee Frantor's obligation under the note and mortgage between Frantor and CBRE. On the same date, CBRE assigned the note and mortgage to non-party Federal Home Loan Corporation (FHLC). On February 27, 2018, FHLC assigned the foregoing note and mortgage to plaintiff. It is alleged that plaintiff owns and holds the relevant note and mortgage. Pursuant to the foregoing agreements, Frantor was obligated to make monthly payments on all sums borrowed and the failure to make a payment when due constituted a default,

which, per the agreements, would authorize plaintiff to foreclose on the mortgage and sell 141-153. On November 1, 2021, Frantor defaulted under the terms of the agreements. Moreover, Torres, Jr. and Torres Sr. have failed to pay the sums due under the note. Plaintiff seeks a judgment authorizing foreclosure and the sale of the property.

Plaintiff's application seeking to appoint a receiver is hereby granted. Significantly, plaintiff establishes that the mortgages executed by Frantor, which were consolidated and assigned to plaintiff, contain a provision authorizing the appointment of a receiver, where, as here, there exists a foreclosure action.

RPL § 254 and § 254(10), read together, state that

[i]n mortgages of real property, and in bonds and notes secured thereby or in assignments of mortgages and bonds and mortgages and notes, or in agreements to extend or to modify the terms of mortgages and bonds and mortgages and notes, the following or similar clauses and covenants must be construed as follows . . . Mortgagee entitled to appointment of receiver. A covenant 'that the holder of this mortgage, in any action to foreclose it, shall be entitled to the appointment of a receiver,' must be construed as meaning that the mortgagee, his heirs, successors or assigns, in any action to foreclose the mortgage, shall be entitled, without notice and without regard to adequacy of any security of the debt, to the appointment of a receiver of the rents and profits of the premises covered by

the mortgage; and the rents and profits in the event of any default or defaults in paying the principal, interest, taxes, water rents, assessments or premiums of insurance, are assigned to the holder of the mortgage as further security for the payment of the indebtedness.

Thus, where a mortgage contains language providing for the appointment of a receiver in an action to foreclose on a mortgage, upon application, the court must appoint a receiver and can do so without notice (*Maspeth Fed. Sav. and Loan Ass'n v McGown*, 77 AD3d 890, 891 [2d Dept 2010] ["The mortgage agreement at issue contains a provision which specifically authorizes the appointment of a receiver upon application by the mortgagee in any action to foreclose the mortgage. Consequently, the plaintiff, as mortgagee, was entitled to the appointment of a receiver without notice and without regard to the adequacy of the security."]; *Naar v I.J. Litwak & Co., Inc.*, 260 AD2d 613, 615 [2d Dept 1999]; *Clinton Capital Corp. v One Tiffany Place Developers, Inc.*, 112 AD2d 911, 912 [2d Dept 1985]). Under the foregoing circumstances, the mortgagee has no obligation to establish the necessity of a receiver (*Febbraro v Febbraro*, 70 AD2d 584, 585 [2d Dept 1979]).

Here, in support of the instant application, plaintiff submits an affidavit by Christopher Nittolo (Nittolo), plaintiff's servicer, who reiterates the allegations in the complaint.

Plaintiff submits the mortgages executed by Frantor.

Paragraph 4 of the first mortgage states that

[t]he Mortgagee in any action to foreclose this mortgage, shall be entitled to the appointment of a receiver, without regard to the solvency or insolvency of any person or entity obligated for the payment of the indebtedness or the adequacy of any security for the indebtedness and without notice, and notice of such appointment is hereby expressly waived.

Similarly, paragraph 14(i) of the second mortgage executed by Frantor states that

[m]ortgagor agrees that, upon the occurrence of any Event of Default, Mortgagee shall be entitled, as a matter of absolute right and without regard to the value or condition of any security for the amount due or the solvency of any person liable therefor, to the appointment of a receiver for the Mortgaged Property upon ex parte application to any court of competent jurisdiction. To the extent allowed by law, Mortgagor waives any right to any hearing or notice of hearing prior to the appointment of a receiver.

The consolidated mortgage states that "[b]orrower assumes or ratifies all of the obligations and agreements under the mortgages ("Existing Mortgages") listed on Exhibit B to this Agreement." Exhibit B contains the first two mortgages executed by Frantor.

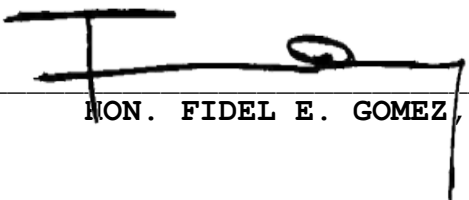
Based on the foregoing, the relief sought by plaintiff - the appointment of a receiver - is authorized by RPL § 254(10), since the mortgage to which Frantor is bound contains the enabling

language prescribed therein, namely the initiation of the instant foreclosure action (*Maspeth Fed. Sav. and Loan Ass'n* at 891; *Naar v* at 615; *Clinton Capital Corp.* at 912). Accordingly, it is hereby

ORDERED that a receiver be appointed in accordance with the Order Appointing Receiver, dated September 15, 2022, and annexed hereto. It is further

ORDERED that plaintiff serve a copy of this Decision and Order and Order Appointing Receiver with Notice of Entry upon all parties within thirty (30) days hereof.

Dated :9/16/22
Bronx, New York



HON. FIDEL E. GOMEZ, AJSC

SEQ. 1

FID.# 5 SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF BRONX

U.S. BANK NATIONAL ASSOCIATION, AS
TRUSTEE FOR THE REGISTERED HOLDERS OF
WELLS FARGO COMMERCIAL MORTGAGE
SECURITIES, INC., MULTIFAMILY MORTGAGE
PASS-THROUGH CERTIFICATES, SERIES 2018-
SB46,

Plaintiff,

-against-

FRANTOR REALTY CORP, THE BANK OF NEW
YORK MELLON, AS COLLATERAL AGENT AND
CUSTODIAN FOR THE NYCTL 2021-A TRUST, NYC
BUREAU OF HIGHWAY OPERATIONS,
COMMISSIONER OF LABOR OF STATE OF NEW
YORK, ANA TORRES, FRANK TORRES, JR., AND
FRANK TORRES A/K/A FRANK TORRES, SR., AND
JOHN DOE NO. 1 THROUGH JOHN DOE NO. XXX,
the last thirty names being fictitious and unknown to
Plaintiff, the persons or parties intended being the
tenants, occupants, persons or corporations, if any,
having or claiming an interest in or lien upon the
premises described in the complaint,

Defendants.

Index No. 808519/2022E

ORDER APPOINTING RECEIVER

(Mortgage Foreclosure Action)

Property known as:
141-153 Lincoln Avenue
Bronx, New York 10454

Block: 2317 Lot: 43

Upon reading and filing the Attorney’s Statement of Aaron P. Davis, Esq., dated August 8, 2022, and all exhibits thereto, the Affidavit of Christopher Nittolo, dated July 26, 2022, and all exhibits thereto, the Affirmation of Aaron P. Davis, Esq., dated August 8, 2022, and upon all other papers and proceedings already had herein, and it appearing to the satisfaction of this Court that: (a) this action is brought to foreclose that certain Consolidation, Extension and Modification Agreement with respect to the Mortgaged Property effective as of October 27, 2017 and recorded with the City Register of Bronx County on November 6, 2017, as CRFN 2017000410951, executed in favor of Original Lender, which encumbers certain real estate in Bronx County, New York and which consolidated and includes those two certain prior mortgages, including: (i) that certain Multifamily Mortgage, Assignment of Rents and Security Agreement with respect to the

Mortgaged Property dated as of August 18, 2017 and recorded with the City Register of Bronx County on August 28, 2017, as CRFN 2017000319084, which mortgage was executed in favor of Brick Bronx Capital LLC and assigned to Original Lender on October 27, 2017 by that certain Assignment of Mortgage effective October 27, 2017 and recorded with the City Register of Bronx County on November 6, 2017, as CRFN 2017110600684001; and (ii) that certain GAP Mortgage with respect to the Mortgaged Property dated October 27, 2017 and recorded with the City Register of Bronx County on November 6, 2017, as CRFN 2017000410950, which mortgage was executed in favor of Original Lender (all three of which are collectively referred to as the “**Consolidated Mortgage**”), (b) Defendant Frantor Realty Corp. (“**Borrower**”) is in default thereunder; (c) the within proceeding has been instituted for foreclosure of the Consolidated Mortgage, and (d) the Consolidated Mortgage contains a clause authorizing the appointment of a Receiver for all rents and profits of said premises, without notice, in the event of a default thereunder and foreclosure thereof, it is

ORDERED, that Chris Neilson, acting individually or by and through his employees at Trigild IVL, (“**Receiver**”) be and is hereby appointed, with the usual powers and directions, Temporary Receiver for the benefit of the Plaintiff of all the rents and profits now due and unpaid or to become due during the pendency of this action and issuing out of the Mortgaged Property as described in Plaintiff’s Verified Complaint, more particularly and commonly described in **Schedule A** annexed hereto and known as and by the street address 141-153 Lincoln Avenue, Bronx, New York, 10454 (collectively, the “**Mortgaged Property**”); and it is further,

ORDERED, that the Receiver is authorized to forthwith take charge and enter into possession of the Property; and it is further,

ORDERED, that before entering upon his duties, said Receiver shall be sworn to fairly and faithfully discharge the duties committed to him and shall execute to the People of the State of New York and file with the Clerk of this Court an undertaking in the penal sum of \$ 168,000.00, conditioned for the faithful discharge of his/her duties as such Receiver; and it is further,

ORDERED, that said Receiver be and is hereby directed to demand, collect and receive from the occupants, tenants, and licensees in possession of the Mortgaged Property, or other persons liable therefore, inclusive of Borrower, all the rents and license fees thereof now due and unpaid or hereafter to become fixed or due, and that said Temporary Receiver upon prior Court approval of Counsel to the Receiver shall be authorized to institute and carry on all legal proceedings necessary for the protection of the

FG
J.S.C.

Mortgaged Property or to recover possession of the whole, or any part thereof, and/or apply to the Court to fix reasonable rental value and license fee value and to compel the tenants and occupant(s) to attorn to the Receiver; and it is further,

upon prior Court approval of Counsel to the Receiver
ORDERED, that the Receiver may institute and prosecute suits for the collection of rent, license fees and other charges now due or hereafter to become due or fixed, and summary proceedings for the removal of any tenants or licensees or other persons therefrom; and it is further,

ORDERED, that pursuant to the provisions of the General Obligations Law section 7-105, anybody holding any deposits or advances of rental as security under any lease or license agreement affecting space in the Mortgaged Property shall turn same over to said Receiver within five (5) days after said Receiver shall have qualified; and thereupon the said Temporary Receiver shall hold such security subject to such disposition thereof as shall be provided in an Order of this Court to be made and entered in this action; and it is further,

ORDERED, that anybody in possession of same shall turn over to said Receiver all rent lists, orders, unexpired and expired leases, agreements, correspondence, notices and registration statements relating to rental space or facilities in the Mortgaged Property; and it is further,

ORDERED, that notwithstanding anything to the contrary contained in this order, the receiver shall not, without the further prior order of this Court, upon prior notice to Plaintiff, make improvements or substantial repairs to the Mortgaged Property at a cost in excess of \$1,000.00; and it is further,

ORDERED, that said Receiver forthwith deposit all monies received by him at the time he receives same in his own name as Receiver in an FDIC insured Bank of the Receiver's choice located in the State of New York and no withdrawals shall be made therefrom except as directed by the Court or on a draft or check signed by the Receiver and countersigned by the surety on his/her undertaking; the Receiver shall furnish the Plaintiff's attorneys with monthly statements of the receipts and expenditures of the Receivership, together with a photocopy of the monthly statements received from said depository; and it is further,

ORDERED, that said Receiver be and is authorized from time to time to rent or lease any part of the Mortgaged Property for terms not exceeding one (1) year or such longer terms as may be required by the City and State of New York; to keep said premises insured against loss by damage or fire; to pay the taxes, assessments, water rates, sewer rents, vault rents, salaries of employees, supplies and other charges; to comply with all the lawful requirements of any municipal department or other authority of the municipality in which the Mortgaged Property is

FG
J.S.C.

FG
J.S.C.

situated; and to procure such fire, plate glass, liability and other insurance as may be reasonably necessary in the types and amounts required by the Loan Documents (as defined in the Verified Complaint); and it is further,

ORDERED, that the tenants, licensees or other persons in possession of the Mortgaged Property attorn to said Receiver and pay over to said Receiver all rents, license fees and other charges related to the Property now due and unpaid or that may hereafter become due; and that Borrower and all other Defendants be enjoined and restrained from collecting the rents, license fees and other charges related to the Mortgaged Property and from interfering in any manner with the Mortgaged Property or Receiver's possession of the Mortgaged Property; and from transferring, removing or in any way disturbing any of the occupants or employees; and that all tenants, occupants, employees and licensees of the Mortgaged Property and other persons liable for the rents be and hereby are enjoined and restrained from paying any rent or license fees or other charges related to the Mortgaged Property to Borrower or any of the other defendants, their agents, servants or attorneys; and it is further,

ORDERED, that the Receiver is prohibited from incurring obligations in excess of the monies in his hands without further Order of this Court or written consent of Plaintiff's attorney; and it is further,

ORDERED, that Borrower turn over to the Receiver, and that Borrower direct that its affiliated property management company turn over to the Receiver, all rents that Borrower or its property manager may have as of the date of this Order, and all rents collected from and after the date of this Order; and it is further,

ORDERED, that all persons now or hereafter in possession of the Mortgaged Property, or any part thereof, and not holding such possession under valid and existing leases or tenancies, do forthwith surrender such possession to said Receiver, subject to emergency laws, if any; and it is further,

ORDERED, that said Receiver after paying the expenses of the management and care of the Mortgaged Property as above provided retain the balance of the monies which may come into his/her hands until the sale of the Property under the judgment to be entered in this action and/or until further Order of this Court; and it is further,

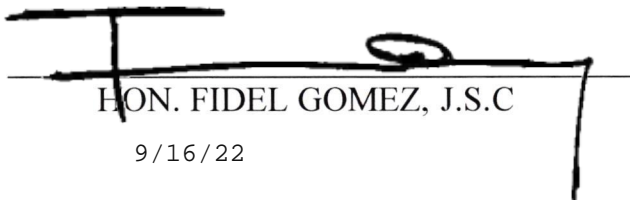
ORDERED, that said Receiver, or any party hereto, may at any time, on proper notice to all parties who may have appeared in this action, apply to this Court for further or other instructions or powers necessary to enable said Receiver to properly fulfill his duties; and it is further,

FG
J.S.C.

ORDERED, that the appointee named herein shall comply with Section 35a of the Judiciary Law, Sections 6401-6404 of the CPLR, Section 1325 of the RPAPL and Rule 36 of the Chief Judge.

NOT WITHSTANDING ANY OTHER PROVISION OF THIS ORDER TO THE CONTRARY, THE RECEIVER SHALL NOT APPOINT AN ATTORNEY, AGENT, APPRAISER, AUCTIONEER OR ACCOUNTANT WITHOUT PRIOR ORDER OF THIS COURT.

ENTER:



HON. FIDEL GOMEZ, J.S.C
9/16/22

Schedule A

(Legal Description of Mortgaged Property)

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, SITUATE, LYING AND BEING IN THE BOROUGH AND COUNTY OF THE BRONX, CITY AND STATE OF NEW YORK DESIGNATED AS NOS. 41, 42, 43, 44 AND 45 IN BLOCK 4 ON A CERTAIN MAP ENTITLED, "MAP OF 1572 BUILDING LOTS SITUATED IN NORTH NEW YORK, WESTCHESTER COUNTY, BELONGING TO CLARENCE S. BROWN," DATED JANUARY 1866 AND FILED IN THE OFFICE OF THE REGISTRAR OF WESTCHESTER COUNTY, FEBRUARY 17, 1866 AS MAP NUMBER 419, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE CORNER FORMED BY THE INTERSECTION OF THE WESTERLY SIDE OF LINCOLN AVENUE WITH THE NORTHERLY SIDE OF 134TH STREET;

RUNNING THENCE NORTHERLY ALONG THE WESTERLY SIDE OF LINCOLN AVENUE, 125 FEET;

THENCE WESTERLY PARALLEL WITH THE NORTHERLY SIDE OF 134TH STREET AND PART OF THE DISTANCE THROUGH A PARTY WALL, 100 FEET;

THENCE SOUTHERLY, PARALLEL WITH THE WESTERLY SIDE OF LINCOLN AVENUE, 125 FEET TO THE NORTHERLY SIDE OF 134TH STREET, AND

THENCE EASTERLY ALONG THE SAID NORTHERLY SIDE OF 134TH STREET, 100 FEET TO THE POINT OR PLACE OF BEGINNING.