

At Part 29 of the Supreme Court held in the County of Suffolk at the One Court Street, Riverhead, NY Courthouse thereof, on the _____ day of _____, 2018.

PRESENT: HONORABLE LINDA KEVINS
JUSTICE OF THE SUPREME COURT

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INDEX NO.:

Plaintiff(s),

**DEFAULT JUDGMENT AND
JUDGMENT OF FORECLOSURE
AND SALE**

v.

Defendant(s).

MORTGAGED PROPERTY:
COUNTY:
SBL #:

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UPON the Summons, Complaint and Notice of Pendency filed in this action on the [Day] day of [Month], [Year], the Notice of Motion dated [Date], the affirmation of [Attorney's Name] and the exhibits annexed thereto, and upon the affidavit of merit and amount due by [Name of AOM Signor] who is [AOM Signor's Title] of [Name of Company AOM Signor Works for], duly sworn to on [Date AOM Signed]; together with the exhibits attached thereto, all in support of Plaintiff's motion for a Default Judgment and Judgment of Foreclosure and Sale; and

UPON proof this action was brought to foreclose a mortgage on real property located at [Property Address], in the County of [County Name], State of New York [Section____, Block____, Lot____]; and

UPON proof that each of the Defendants herein has been duly served with the Summons and Complaint in this action, and did not answer or otherwise appear, nor had their time to so do extended; and it appearing that more than the legally required number of days had elapsed since

said Defendants [List Defaulting Defendants] were so served and/or appeared; and Plaintiff having established to the court's satisfaction that a judgment against defendants is warranted;

UPON the affidavit of mailing reflecting compliance with CPLR §3215(g)(3)(iii); and

UPON proof that non-appearing defendants [List Names] are not absent, in accordance with RPAPL §1321(2); and

[If Applicable] AND the court having held a mandatory settlement conference pursuant to CPLR §3408 [Choose a or b]:

a. A settlement was not reached and the case was released from the settlement conference part on [Date].

b. Plaintiff attended a settlement conference on [Date] but the defendant mortgagor(s) failed to appear and the case was released from the settlement conference part;

[If Applicable] AND it appearing that the defendant(s)/ mortgagor(s) is/are not resident(s) of the property subject to foreclosure;

[If Applicable] AND Plaintiff having waived its right to a deficiency judgment and accepted the sale of the property in full satisfaction of the mortgage debt; and

UPON proof of notice of this motion to all parties and persons entitled thereto;

NOW, on motion by [Attorney's Name], Esq., attorney for the Plaintiff, it is hereby

ORDERED, ADJUDGED AND DECREED that the default of all non-appearing defendants is hereby fixed and determined; and it is further

ORDERED, ADJUDGED AND DECREED that, in accordance with the Affidavit of Merit and Amounts Due and Owing dated [Date], the sum of \$_____ is awarded to the Plaintiff as of [Date]; and it is further

ORDERED, ADJUDGED AND DECREED that the mortgaged property described in the Complaint and as hereafter described, or such part thereof as may be sufficient to discharge the mortgage debt, the expenses of the sale, and the costs of this action as provided by the RPAPL be sold, within 90 days from the date of this Judgment, in one parcel, at a public auction at the [Town Hall, Location/Address, and to the extent possible, Date/Time], by and under the direction of [Name of Referee, Address, Telephone], who is hereby appointed Referee for that purpose; that said Referee give public notice of the time and place of sale in accordance with RPAPL §231 in [Names of Authorized Publications]; and it is further

ORDERED, ADJUDGED AND DECREED that by accepting this appointment the Referee certifies that he/she is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36), including, but not limited to §36.2(c) (“Disqualifications from appointment”) and §36.2(d) (“Limitations on appointments based upon compensation”); and if the Referee is disqualified from receiving an appointment pursuant to the provisions of that Rule, the Referee shall immediately notify the Appointing Judge; and it is further

ORDERED, ADJUDGED AND DECREED that the Referee is prohibited from accepting or retaining any funds for him/herself or paying funds to him/herself without compliance with Part 36 of the Rules of the Chief Administrative Judge; and it is further

ORDERED, ADJUDGED AND DECREED that the Referee shall conduct the foreclosure sale only if Plaintiff, its successors and/or assignees, or its representative is present at the sale or the Referee has received a written bid and Terms of Sale from Plaintiff, its successors and/or assigns, or its representative as if Plaintiff were physically present to submit such bid; and it is further

ORDERED, ADJUDGED AND DECREED that if the Referee does not conduct the sale

within 90 days of the date of the judgment, in accordance with CPLR §2004, the time fixed by RPAPL §1351(1) is extended for the Referee to conduct the sale as soon as reasonably practicable; and it is further

ORDERED, ADJUDGED AND DECREED that at the time of sale the Referee shall accept a written bid from the Plaintiff or the Plaintiff's attorney, just as though Plaintiff were physically present to submit said bid; and it is further

ORDERED, ADJUDGED AND DECREED that the Referee shall accept the highest bid offered by a bidder who shall be identified upon the court record, and shall require that the successful bidder immediately execute Terms of Sale for the purchase of the property, and pay to the Referee, in cash or certified or bank check, ten percent (10%) of the sum bid, unless the successful bidder is Plaintiff in which case no deposit against the purchase price shall be required; and it is further

ORDERED, ADJUDGED AND DECREED that, in the event the first successful bidder fails to execute the Terms of Sale immediately following the bidding upon the subject property or fails to immediately pay the ten percent (10%) deposit as required, the property shall immediately and on the same day be reoffered at auction; and it is further

ORDERED, ADJUDGED AND DECREED that in the event a party other than the Plaintiff becomes the purchaser at the sale, the closing of title shall be held no later than 30 days after such sale unless otherwise stipulated by all parties to the sale; and it is further

ORDERED, ADJUDGED AND DECREED that, Plaintiff's attorney shall be present at such third party purchaser closing, and it is further

ORDERED, ADJUDGED AND DECREED that, after the property is sold, the Referee shall execute a deed to the purchaser in accordance with RPAPL §1353 and the Terms of Sale,

which shall be deemed a binding contract; and it is further

ORDERED, ADJUDGED AND DECREED that if Plaintiff (or its affiliate, as defined in paragraph (a) of subdivision 1 of section six-1 of the Banking Law) is the purchaser, such party shall place the property back on the market for sale or other occupancy: (a) within 180 days of the execution of the deed of sale, or (b) within 90 days of completion of construction, renovation, or rehabilitation of the property, provided that such construction, renovation, or rehabilitation proceeded diligently to completion, whichever comes first, provided however, that a court of competent jurisdiction may grant an extension for good cause shown; and it is further

ORDERED, ADJUDGED, AND DECREED that the Referee, on receiving the proceeds of such sale, shall forthwith pay therefrom, in accordance with their priority according to law, taxes, assessments, sewer rents, and water rates, which are, or may become, liens on the property at the time of sale, with such interest or penalties which may have lawfully accrued thereon to the date of payment; and it is further

ORDERED, ADJUDGED, AND DECREED, that the Referee shall then deposit the balance of said proceeds of sale in her/his own name as Referee in any local FDIC insured banking institution, and shall thereafter make the following payments in accordance with RPAPL §1354, as follows:

FIRST: The Referee's fees for conducting the sale, in accordance with CPLR §8003(b), shall be \$_____ less any sum paid to the Referee to compute and report;

SECOND: All taxes, assessments, and water rates that are liens upon the property and monies necessary to redeem the property from any sales for unpaid taxes, assessments, or water rates that have not become absolute, and any other

amounts due in accordance with RPAPL §1354(2). Purchaser shall be responsible for interest and penalties due on any real property taxes accruing after the sale. The Referee shall not be responsible for the payment of penalties or fees pursuant to this appointment. The Purchaser shall hold the Referee harmless from any such penalties or fees assessed;

THIRD: The expenses of the sale and the advertising expenses as shown on the bills presented and certified by said Referee to be correct, duplicate copies of which shall be annexed to the report of sale;

FOURTH: The Referee shall then pay to the Plaintiff or its attorney the following:

Judgment Amount: [\$_____with interest at the note rate from [Date] until [Date], together with any advances as provided for in the note and mortgage which Plaintiff has made for taxes, insurance, principal, and interest, and any other charges due to prior mortgages or to maintain the property pending consummation of this foreclosure sale, not previously included in the computation, upon presentation of receipts for said expenditures to the Referee, all together with interest thereon pursuant to the note and mortgage, and then with interest from the date of entry of this judgment at the statutory rate until the date the deed is transferred] -OR- [\$_____with interest at the statutory rate from [Date], the date of acceleration];

Costs and Disbursements: \$_____adjudged to the Plaintiff for costs and disbursements in this action as taxed or calculated by the Clerk and inserted herein, with interest at the statutory judgment rate from the

date of entry of this judgment;

Additional Allowance: \$_____ is hereby awarded to Plaintiff in addition to costs, with interest at the statutory judgment rate from the date of entry of this judgment, pursuant to CPLR Article 83;

Attorney Fees: Pursuant to Plaintiff's Attorney's Affirmation of Services Exhibit_____, and the provision for reasonable attorney's fees in the Mortgage, Exhibit_____, page_____, paragraph_____, line_____, Plaintiff is entitled to reasonable attorney fees. (*If applicable*, in the retainer agreement, Plaintiff's attorney agreed upon a flat fee rate of _____,) \$_____ is hereby awarded to Plaintiff as reasonable legal fees herein, with interest at the statutory rate from the date of entry of this judgment;

FIFTH: Surplus monies arising from the sale shall be deposited with the Suffolk County Comptroller by the Referee conducting the sale within five days after receipt, in accordance with RPAPL §1354(4) and in accordance with Suffolk County Local Rule 41-13 regarding Surplus Monies; and it is further

ORDERED, ADJUDGED AND DECREED that if the Plaintiff is the purchaser of the property, or in the event that the rights of the purchasers at such sale and the terms of sale under this judgment shall be assigned to and be acquired by Plaintiff, and a valid assignment thereof is filed with said Referee, said Referee shall not require Plaintiff to pay in cash the entire amount bid at said sale, but shall execute and deliver to Plaintiff or its assignee, a deed or deeds of the property sold upon the payment to said Referee of the amounts specified in items marked "First", "Second", and "Third" above; that the Referee shall allow the Plaintiff to pay the amounts in paragraph "Second" and "Third" above when it is recording the deed; that the

balance of the bid, after deducting the amounts paid by the Plaintiff, shall be applied to the amount due Plaintiff as specified in paragraph “Fourth” above; that Plaintiff shall pay any surplus after applying the balance of the bid to the Referee, who shall deposit it in accordance with paragraph “Fifth” above; and it is further

ORDERED, ADJUDGED AND DECREED that all expenses of recording the Referee’s deed, including real property transfer tax, which is not a lien upon the property at the time of sale, shall be paid by the purchaser, not by the Referee from sale proceeds, that any transfer tax shall be paid in accordance with Tax Law §1404; and it is further

[*If Applicable*] ORDERED, ADJUDGED AND DECREED that even if the sale proceeds distributed in accordance paragraphs “First,” “Second,” “Third”, and “Fourth” above are insufficient to pay Plaintiff the Amount Due as set forth in paragraph “Fourth” above, Plaintiff has waived and may not seek to recover a deficiency judgment in accordance with RPAPL §1371; and it is further

ORDERED, ADJUDGED AND DECREED that the mortgaged property is to be sold in one parcel in “as is” physical order and condition, subject to any condition that an inspection of the property would disclose; any state of facts that an accurate survey of the property would show; any covenants, restrictions, declarations, reservations, easements, right of way, and public utility agreements of record, if any; any building and zoning ordinances of the municipality in which the mortgaged property is located and possible violations of same; any rights of tenants or persons in possession of the subject property; prior liens or record, if any, except those liens addressed in RPAPL §1354; any equity of redemption of the United State of America to redeem the property within 120 days from the date of sale; and any rights pursuant to CPLR §317, §2003, and §5015, or any appeal of the underlying action or additional litigation brought by any

defendant or its successor or assignee contesting the validity of this foreclosure; and it is further

ORDERED, ADJUDGED AND DECREED that the purchaser be let into possession of the property upon production in hand of the Referee's Deed or upon personal service of the Referee's deed in accordance with CPLR §308; and it is further

ORDERED, ADJUDGED AND DECREED that the Defendants in this action, all persons claiming through them, and any person obtaining an interest in the property after the filing of the Notice of Pendency are barred and foreclosed of all right, claim, lien, title, and interest in the property after the sale of the mortgaged property; and it is further

ORDERED, ADJUDGED AND DECREED that within thirty days after completing the sale and executing the proper conveyance to the purchaser, unless the time is extended by the Court, the Referee making the sale shall file with the County Clerk a report under oath of the disposition of the proceeds of the sale in accordance with RPAPL §1355(1) and follow Suffolk County Local Rule 41-13 regarding handling of Surplus Monies; and it is further

ORDERED, ADJUDGED AND DECREED that if the purchaser or purchasers at said sale default(s) upon the bid and/or the terms of sale the Referee may place the property for resale without prior application to the court unless Plaintiff's attorneys shall elect to make such application; and it is further

[If Applicable] ORDERED that *[New Note Holder]* be substituted into the caption in the place and stead of Plaintiff, and, following such substitution, that the Clerk of the Court amend the docket and electronic docket accordingly; and it is further

[If Applicable] ORDERED that the caption shall read as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

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PLAINTIFF

INDEX NO.:

Plaintiff(s),

MORTGAGED PROPERTY:

v.

COUNTY:

SBL #:

DEFENDANT

Defendant(s).

-----X

And it is further

ORDERED, ADJUDGED AND DECREED that Plaintiff shall serve a copy of this Order and Judgment with Notice of Entry upon the owner of the equity of redemption, any tenants named in this action, and any other parties or persons entitled to service, including the Referee appointed herein; and it is further

ORDERED, ADJUDGED AND DECREED that nothing herein shall be deemed to relieve Plaintiff of any obligation imposed by RPAPL §1307 and RPAPL §1308 to secure and maintain the property until such time as ownership of the property has been transferred and the deed duly recorded; and it is further

ORDERED, that Plaintiff is directed to serve a copy of this Order with Notice of Entry within 20 days of the date of this Order upon all parties who have not waived further notice, as well as upon the Referee appointed herein, and to promptly file the Affidavits of Service with the Clerk of the Court; and it is further

ORDERED, ADJUDGED AND DECREED that when the Referee files a report of sale, he or she shall concurrently file a Foreclosure Actions Surplus Monies Form; and it is further

ORDERED, ADJUDGED AND DECREED that to ensure compliance herewith, Plaintiff shall file a written report with the court within six months from the date of entry of this judgment stating whether the sale has occurred and the outcome thereof.

Said property is commonly known as [Street Address].

The legal description of the mortgaged property referred to herein is annexed hereto as

Schedule A [*If provided by Plaintiff, attach legal description as set forth on deed or mortgage*].

[Attach Terms of Sale

DATE _____

ENTER

LINDA KEVINS

