

At a term of Supreme Court of the State of New York held in and for the County of Oneida, at the Oneida County Courthouse, _____, New York, on the ____ day of _____, 20__.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ONEIDA

PRESENT: HON. _____

Plaintiff,

**JUDGMENT OF
FORECLOSURE AND SALE**

-v-

Index No:
RJI No:

Property Address:

Defendant(s).

***[PLAINTIFF'S COUNSEL MUST CHECK AND COMPLETE
ALL APPLICABLE ENTRIES IN THIS JUDGMENT OF
FORECLOSURE EXCEPT AS OTHERWISE NOTED]***

Plaintiff having moved this Court for a Judgment of Foreclosure and Sale,

NOW, upon plaintiff's ex parte application or motion heard on _____

at which time plaintiff / defendant appeared, or no appearances were required, and upon

all prior proceedings herein, and a settlement/status conference having been held on

_____ and (if requested pursuant to AO/157/20) a second settlement/status

conference having been held on _____, and upon

1) the Summons and Complaint filed on _____;

2) the Notice of Pendency filed on _____;

3) the Affirmation of _____ affirmed on _____

_____, with Exhibits ___ - ___ annexed;

4) the Affidavit of _____ dated _____, with Exhibits ___ - ___ annexed;

5) the Report of the Referee, _____, Esq. dated _____, by which Report it appears that the sum of \$ _____ was due as of _____, and the mortgaged premises should be sold in

one parcel or _____;

6) proof of service upon all parties entitled to notice of this application for a Judgment of Foreclosure and Sale:

7) other [specify]: _____;

it is hereby

Ratification of Referee's Report

ORDERED, ADJUDGED and DECREED that to the extent provided for herein the Report of Referee _____, Esq. dated _____ be and the same hereby is ratified and confirmed; and it is further

Sale Instructions

ORDERED, ADJUDGED and DECREED that the above-described mortgaged premises, 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 Real Property Actions and Proceedings Law, be sold in

one parcel or _____ at public auction

in the Lobby of the Oneida County Courthouse, 302 North James Street, Rome, New York and under

the direction of the Referee who is appointed herein for that purpose. The Referee shall coordinate with the Supreme Court Clerk's Office at Oneida-Foreclosures-Sales@nycourts.gov to set the date of sale, and shall give public notice of the time and place of sale in accordance with RPAPL §231 in the Rome Sentinel/Observer Dispatch, and in accordance with the Fifth Judicial District Foreclosure Sale Covid-19 Protocol, attached hereto, including that a Covid-19 Notice shall be included in the advertisement published in the local newspaper stating that all Covid-19 Safety Protocols will be followed and enforced by the Referee at the foreclosure sale; and

[The Court Will Initial the Applicable Provision Below]

the Referee shall conduct the foreclosure sale as soon as reasonably possible, but in no event prior to _____, 20_;

the Referee shall conduct the foreclosure sale on or before _____;

and it is further

Initial Bid Instructions

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

and it is further

Subsequent Bid Instructions

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 premises or fails to immediately pay the ten percent (10%) deposit as required, the premises shall immediately and on the same day be reoffered at auction; and it is further

Closing of Title

ORDERED, ADJUDGED and DECREED that the closing of title shall take place at the office of the Referee or at such other location as the Referee shall determine and the closing of title and filing of the Referee's deed shall be made within forty-five (45) days after such sale unless otherwise stipulated to by all parties. The Referee shall transfer title only to the successful bidder at the auction. Any delay or adjournment of the closing date beyond forty-five (45) days may be stipulated to by the parties with the Referee's consent up to ninety (90) days from the date of sale. Any adjournment beyond ninety (90) days may be set only with approval of this Court; and it is further

Deposit of Funds

ORDERED, ADJUDGED and DECREED that the Referee shall deposit all funds received pursuant to this Judgement of Foreclosure and Sale in the Referee's IOLA account; and it is further

Payments from Funds

ORDERED, ADJUDGED and DECREED that the Referee on receiving the proceeds of such sale shall cause to be paid promptly therefrom:

FIRST: The statutory fees and commissions of the Referee pursuant to CPLR §8003(b) in the amount of \$750.00. In the event a scheduled sale is cancelled or postponed by a person or entity other than the Referee, or the action is discontinued, pursuant to CPLR §8003(a) the plaintiff shall pay to the Referee the sum of \$350.00 for each adjournment or cancellation, and for any discontinuance. Such compensation may be recouped from the proceeds of sale as a cost to plaintiff. This Judgement of Foreclosure and Sale constitutes the necessary prior authorization for compensation as set forth herein. No compensation totaling in excess of \$1,1100.00, including compensation authorized pursuant to CPLR §8003(a) for computation of the sum due to plaintiff, may be accepted by the Referee without Court approval and compliance with the provisions of 22 NYCRR §36.4.

SECOND: The reasonable expenses of the sale, including the cost of advertising as shown on the bills presented and certified by the Referee to be correct, copies of which shall be annexed to the Report of Sale. The Referee shall not be held 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: Pursuant to RPAPL §1354 in accordance with their priority according to law, all taxes, assessments, sewer rents, water rates and any other charges placed upon the premises by any municipal authorities having priority over the foreclosed mortgage and which are liens on the premises at the time of sale, with such interest or penalties that lawfully may have accrued thereon to the date of payment.

FOURTH: as limited herein, to the plaintiff or its attorneys

- (a) ***[to be inserted by the Clerk]*** the sum of \$_____ for costs and disbursements in this action to be taxed by the Clerk, with interest from the date hereof;
- (b) the sum of \$_____, the amount reported by the Referee and/or approved by the Court as due, together with interest thereon pursuant to the terms of the Note from_____, the date to which interest was calculated in the Report of the Referee through the date of entry of this Judgment of Foreclosure and Sale, and thereafter at the statutory post-judgment rate to the date of transfer of title, or so much thereof as the purchase money of the mortgaged premises will pay of the same;
- (c) ***[to be inserted by the Court]*** the sum of \$_____ hereby awarded to the plaintiff as reasonable legal fees as provided for in the Mortgage;
- (d) the amount of any advances provided for in the Note and Mortgage that plaintiff may have made for taxes and insurance, and amounts due to prior mortgagors, upon presentation to the Referee of receipts for these expenditures;

- (e) the amount of any advances provided for in the Note and Mortgage that plaintiff reasonably may have made to maintain the premises pending consummation of the foreclosure sale upon presentation to the Referee of receipts for these expenditures.

Notwithstanding sub-paragraphs **FOURTH(b)** and **FOURTH(e)** above, plaintiff may recover interest for only ninety (90) days after the date of this Judgment of Foreclosure and Sale, and plaintiff may recover up to a maximum of only \$250.00 for any maintenance or premise preservation expenses after the date of this Judgment of Foreclosure; and it is further

Report of Sale

ORDERED, ADJUDGED and DECREED that the Referee shall timely file the Referee's Report of Sale and plaintiff shall timely move to confirm the Referee's Report of Sale pursuant to RPAPL §1355; and it is further

Plaintiff as Purchaser

ORDERED, ADJUDGED and DECREED that in the event plaintiff purchases the mortgaged premises at the sale, the Referee shall not require the plaintiff to pay in cash the entire amount bid at the sale but shall execute and deliver to the plaintiff a deed of the premises sold upon payment to the Referee of the sum awarded under the above provisions marked "FIRST," "SECOND," and "THIRD," if such expenses were paid by the Referee, or in lieu of the payment of the last mentioned amounts, upon filing with the Referee receipts of the proper municipal authorities showing payment thereof. The balance of the amount bid, after deducting therefrom the aforementioned payments to the Referee shall be allowed to the plaintiff and applied by the Referee upon the amounts due to the plaintiff as specified in item marked "FOURTH." If upon applying the balance of the amount bid, there is a surplus over and above the amounts due to plaintiff, then upon delivery to plaintiff of the Referee's deed, plaintiff shall pay to the Referee the amount of such surplus, which amount shall be applied by the Referee, upon

motion made pursuant to RPAPL §1351(3), and proof satisfactory to the Referee of the sums due thereon, to any subordinate mortgage duly recorded against the premises pursuant to RPAPL §1354(3), which payment shall be reported in the Referee's Report of Sale. Any surplus remaining after all payments as herein provided shall be deposited into Court in accordance with RPAPL §1354(4) and the Referee shall immediately give notice of such surplus to the owner of the mortgaged premises as identified by plaintiff at the time of the sale; and it is further

Surplus Monies

ORDERED, ADJUDGED and DECREED that the Referee shall take and file with the Referee's Report of Sale plaintiff's receipt(s) for the amounts paid as directed in item marked "FOURTH," and the Referee shall deposit the surplus monies, if any, with the Oneida County Department of Finance, to the credit of this action, within five (5) days after receipt unless such period is deemed extended by the filing of an application for additional compensation, to be withdrawn only upon order of this Court; and the Referee shall make the Referee's Report of Sale under oath showing the disposition of the proceeds of the sale accompanied by the vouchers of the person(s) to whom payment was made and file it in the Oneida County Clerk's Office within thirty (30) days after completing the sale and executing the proper conveyance to the purchaser or within thirty (30) days of a decision of this Court with respect to any application for additional compensation; and it is further

Foreclosure Action Surplus Monies Form

ORDERED, ADJUDGED and DECREED that the Referee shall complete the Foreclosure Action Surplus Monies Form and file it in the Oneida County Clerk's Office and deliver a copy to the Court within thirty (30) days of the foreclosure sale; and it is further

Deficiency Judgment Application

ORDERED, ADJUDGED and DECREED that if the proceeds of the sale are insufficient to pay the amount reported by the Referee as due to plaintiff, the plaintiff may apply to the Court to recover the whole or such part of the deficiency as prescribed by RPAPL §1371; and it is further

Possession

ORDERED, ADJUDGED and DECREED that the purchaser(s) at the foreclosure sale be let into possession of the premises on production of the Referee's deed; and it is further

Claims Barred

ORDERED, ADJUDGED and DECREED that the defendant(s) in this action, and all persons claiming under any of them after the filing of the Notice of Pendency of this action, be and hereby forever are barred and foreclosed of all right, claim, lien, title, interest and equity of redemption in the mortgaged premises and each and every part thereof; and it is further

Conditions of Sale

ORDERED, ADJUDGED and DECREED that the premises be sold in "as is" physical order and condition on the day of sale, subject to any state of facts that an inspection of the premises would disclose, any state of facts that an accurate survey of the premises would show, any covenants, restrictions, declarations, reservations, easements, right of way and public utility agreements of record, any building and zoning ordinances of the municipality in which the mortgaged premises are located and possible violations of same, any rights of tenants or persons in possession of the subject premises, prior liens of record, if any, except those liens addressed in RPAPL §1354, and any equity of redemption of the United States of America to redeem the premises within one hundred twenty (120) days from the date of sale. Risk of loss shall not pass to purchaser until closing of title; and it is further

Referee Qualification

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 including but not limited to 22 NYCRR §36.2(c) (“Disqualifications from appointment) and 22 NYCRR §36.2(d) (“Limitations on appointments based upon compensation”); and it is further

Service of Judgment of Foreclosure and Sale

ORDERED, ADJUDGED and DECREED that a copy of this Judgment of Foreclosure and Sale with notice of entry shall be served within twenty (20) days of entry and no less than thirty (30) days prior to sale upon the designated Referee, the owner of the equity of redemption as of the date of this Judgment of Foreclosure and Sale, any tenants named in this action, and any other party entitled to notice; and it is further

Service of Notice of Sale

ORDERED, ADJUDGED and DECREED that plaintiff shall serve a copy of the Notice of Sale upon the owner of equity of redemption at the owner of equity of redemption’s last known address and at the property address, and an affidavit of such service shall be filed at least ten (10) days prior to the scheduled sale; and it is further

Transfer of Interest During Pendency

ORDERED, ADJUDGED and DECREED that during the pendency of this action if any interest in the Note and/or Mortgage that is the subject of this action has been or is transferred, the person or entity to whom the interest has been or is transferred shall apply to the Court within thirty (30) days of the transfer to be substituted or joined in this action pursuant to CPLR §1018.

Dated: _____

J.S.C.

FIFTH JUDICIAL DISTRICT FORECLOSURE SALE COVID-19 PROTOCOLS

In an Administrative Order of the Chief Administrative Judge of the Courts dated July 23, 2020 (AO 157/20), Chief Administrative Judge Lawrence Marks required each judicial district to assess auction practices within the district and to develop “appropriate procedures and protocols for the safe and healthful conduct of such actions within their districts in light of the COVID-19 pandemic” (AO 157/20). The policies and procedures set forth below will take effect immediately on approval and remain in effect during the COVID-19 health emergency. The policies and procedures herein will best ensure the requirements of social distancing and any requirement for face coverings. The filing and service of documents in foreclosure proceedings shall continue to be governed by AO/121/20. The requirement of a status or settlement conference in all foreclosure matters shall remain in effect in AO/157/20 as follows:

4. Conferences:

- a. Prior to conducting any further proceedings in any foreclosure matter, the court must initiate a status or settlement conference (including, where applicable, a settlement conference pursuant to CPLR Rule 3408). If any party does not appear at the conference, the court shall reschedule and make a second attempt to hold the conference before undertaking further proceedings.
- b. At the conference, the court shall review the procedural history of the matter; confirm compliance with notice requirements, inquire into the effects, if any, that the COVID-19 pandemic has had upon the parties; review any special relief under state or federal law to which the parties may be entitled in light of the pandemic; refer unrepresented parties to local civil legal service providers and housing counseling agencies; assess any pending and anticipated motions; approve briefing schedules proposed by stipulation of the parties; and use best efforts (including referral to alternative dispute resolution) to resolve any outstanding issues.

Pursuant to AO/232/20, the requirement of a status or settlement conference in all foreclosure matters (including matters where a judgment of foreclosure issued or an auction was scheduled prior to March 17), set forth in AO/157/20 shall remain in effect, with two modifications as follows:

- (i) Conference Requirement for Vacant and Abandoned Property: No conference need be held in a foreclosure matter where the foreclosing lender submits an affirmation to the court averring that, following diligent inquiry, it knows the property at issue to be currently abandoned and vacant.
- (ii) Conference Requirement for In Rem Foreclosures: The conference requirement shall apply to in rem foreclosure proceedings only where the enforcing officer (e.g., the county attorney or other person filing the proceeding) deems such a conference to be in the public interest (for example, the conference is likely to result in a settlement beneficial to all parties).

The Court shall attach to the Judgment of Foreclosure and Sale a copy of the COVID-19 protocols that will be implemented at the foreclosure auction/sale. The Amended Judgment of Foreclosure and Sale shall direct that a COVID-19 Notice shall be included in the advertisement published in the local newspaper stating that COVID-19 safety protocols will be followed at the foreclosure sale.

Each Supreme Court Clerk in the Fifth Judicial District shall establish a centralized telephone, email or similar system to allow the Referee, attorneys, parties and participants to utilize for scheduling purposes and to obtain any information relating to the auction, including the date, place and time. No more than one public auction may be conducted at one time. Auctions must be scheduled at least 30 minutes apart.

All Orders appointing the Referee shall include a provision that the Referee agrees to comply with these Fifth Judicial District Foreclosure Sale Protocols, including social distancing and PPE guidelines.

Before entering the Courthouse, the Referee, attorneys and any member of the public shall undergo standard COVID-19 and New York State Travel Advisory questioning, be instructed to wear a face covering and have their temperature taken. Anyone with a fever will be excused from attending the foreclosure sale, as well as anyone answering the screening questions in the affirmative. The location of any foreclosure sale shall be held in a large venue to ensure appropriate social distancing as set forth below.

During the auction/sale, the Referee, attorneys and any potential bidders shall stand or sit at least six (6) feet from one another. The Lobby or designated area should be prepared and marked to ensure appropriate social distancing. All attendees shall wear a face mask at all times, no exceptions. In addition, the Referee may wear a face shield. Court Security shall be present to enforce all safety protocols. In the rare event that an auction/sale shall exceed the space required for appropriate social distancing, the Referee shall immediately request the Supreme Court Clerk to relocate the sale to a larger room.

The Referee shall not conduct an auction and/or shall stop an auction where COVID-19 protocols, including social distancing cannot be followed (AO/232/20). The Referee is further authorized to contact the Chief Clerk and/or Supreme Court Judge to request a larger space to conduct the auction.

The Referee may, upon application to the Court, and upon good cause shown, apply to allow participants/bidders to appear virtually, provided the Chief Clerk is given three (3) business days' advance notice of the need for virtual capability.

The Supreme Court Clerk of each County shall ensure that there is sufficient room and space to allow the Referee, participants and winning bidder to complete paperwork after the auction in an area that meets all safety protocols.

Oneida County

The foreclosure auction shall be held in the Lobby of the Rome Supreme Courthouse to accommodate social distancing. A Court Security Officer shall be in attendance to ensure compliance with all COVID-19 protocols.