

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,

ORDER OF REFERENCE

-v-

Index No:

RJI No:

Property Address:

Defendants.

Plaintiff having moved this Court for an Order:

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

- striking the answer of defendant(s) _____ and converting each such appearance to a general notice of appearance
- pursuant to CPLR §3215, granting plaintiff default judgment
- pursuant to CPLR §3212, granting plaintiff summary judgment
- amending the caption to
 - delete defendant(s) _____
 - substitute the names of _____ for defendant(s) John Doe and/or Jane Doe

- other _____
- pursuant to RPAPL §1321, appointing a Referee to compute the sums due plaintiff on the Note and Mortgage
- other [specify]: _____.

NOW, upon plaintiff's ex parte application or motion heard on _____ at which time plaintiff / defendant appeared, or no appearances were required, and a status/settlement conference having been held on _____, and (if required pursuant to AO/157/20), a second conference having been held on _____, and upon the Summons and Complaint and proof that all defendants have been served, and upon proof that the time for all defendant(s) to answer or appear has expired, and upon the:

- 1) affidavit of _____ dated _____, with Exhibits ____ - ____ annexed;
- 2) affirmation of _____ affirmed on _____, with Exhibits ____ - ____ annexed;
- 3) other [specify]: _____;

it is hereby

ORDERED that the plaintiff's motion:

- for a default judgment pursuant to CPLR § 3215 and RPAPL § 1321 is granted;
- to strike defendant(s)' answer and for summary judgment pursuant to CPLR §3212 is granted;
- other [specify]: _____;

and it is further

ORDERED that the caption of this action is amended to

- delete the name(s) of defendant(s) _____
- substitute the name(s) of _____
for defendant(s) John Doe and/or Jane Doe
- other [specify]: _____

and it is further

ORDERED that the caption of this action as amended shall read as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ONEIDA

Plaintiff,

-v-

Defendant(s).

and it is further

ORDERED that [*the Court will designate the Referee*]

Name: _____, Esq.

Address: _____

Telephone: _____

is hereby appointed Referee to ascertain, compute and report the total amount due to plaintiff for unpaid principal, accrued interest and all reasonable mortgage costs and expenses other than

attorneys' fees secured by the Note and Mortgage sued upon and set forth in the Complaint, and to examine and report as to whether the mortgaged premises should be sold in one parcel. The Referee shall not be required to notice or conduct a hearing and the plaintiff may submit to the Referee its proof by affidavit; and it is further

ORDERED 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 section 36.2(c) ("Disqualifications from appointment") and section 36.2 (d) ("Limitations on appointments based upon compensation"); and it is further

ORDERED that by accepting this appointment the Referee certifies that he/she will comply with and enforce the Fifth Judicial District Foreclosure Sale Covid-19 Protocols, attached hereto, including social distancing and PPE guidelines; and it is further

ORDERED that pursuant to CPLR §8003(a), in the discretion of the Court, the Referee shall be paid a fee of \$350.00 upon the filing of the Report of the Referee computing the amount due to plaintiff; and it is further

ORDERED 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; and it is further

ORDERED that the Referee shall file his/her Report on or before _____
[the Court will insert this date]; and it is further

ORDERED that on or before _____ [*the Court will insert this date*], the plaintiff shall submit as appropriate a Motion or an Ex Parte application in compliance with all legal and administrative requirements for a Judgment of Foreclosure and Sale; and it is further

ORDERED that in the event plaintiff fails to timely submit the required Motion or Ex Parte application for a Judgment of Foreclosure and Sale, in its discretion, the Court may either (1) strike all interest accruing on the loan as of the subject date together with any and all late fees, penalties, property inspection fees and preservation costs; or (2) dismiss the action for plaintiff's failure to comply with the Court's deadline (*see Andrea v. Arnone, Hedin, Casker, Kennedy & Drake*, 5 NY3d 514 (2005)).

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.