

COMMITTEE ON MORTGAGE FORECLOSURES FOR THE SEVENTH JUDICIAL DISTRICT

RECOMMENDED JUDGMENT (Revised 11/13)

Present: STATE OF NEW YORK SUPREME COURT COUNTY OF

Plaintiff(s),

vs.

JUDGMENT OF FORECLOSURE AND SALE INDEX NO. _____

_____ Defendant(s).

ON the Summons and Complaint duly filed in this action on _____, 200_, on the Notice of Pendency duly filed on _____, 200_ and all proceedings thereon; and on reading and filing the Affirmation in Support of Judgment of Foreclosure and Sale of _____, affirmed _____, and on reading the Affirmation of Regularity of _____ dated _____, 200_, showing that all of the Defendant(s) herein have been duly served within this State with a copy of the summons in this action, or have voluntarily appeared by their respective attorneys; and on the proof of service upon and appearance, if any, by the Defendant(s) herein heretofore filed in this action; and stating that more than the legally required number of days have elapsed since said Defendant(s) were so served; and that none of the Defendant(s) has served an answer to said Complaint, nor has their time to do so been extended; none of the defendants are infants,

incompetents or absentees, and since the filing of the notice of pendency of this action, the complaint herein has not been amended so as to make new parties defendant to this action or so as to embrace real property other than that described in the original complaint or so as to extend the plaintiff's claim against the mortgaged premises; and that the complaint herein and due notice of pendency of this action containing all the particulars required to be stated therein were duly filed in the _____ County Clerk's Office on _____, 200_ and [the Court having held a settlement conference on _____ as required by CPLR 3408] OR [no settlement conference having been required nor held pursuant to CPLR 3408]; and

ON the Order of Reference signed _____ and entered on _____, 200_, appointing _____, Esq., as Referee in this action to ascertain and compute the amount due, and to examine the Plaintiff or its agent on oath as to the allegations of the complaint, and to examine and report whether the mortgaged premises should be sold in one or more parcels; and on reading the report of the Referee dated _____, 200_, it appears that the sum of \$ _____ was due the Plaintiff as of _____, 200_, exclusive of counsel fees; plus a per diem interest for every day thereafter, on the date of said Report and that the mortgaged premises should be sold in one parcel, and that none of the Defendants is entitled to notice of this application; and

NOW, on motion of _____, the attorneys for the Plaintiff, it is

ORDERED, ADJUDGED AND DECREED that the report of the said Referee, be, and the same is hereby, in all respects, ratified and confirmed; and it is further

ORDERED, ADJUDGED AND DECREED that the mortgaged premises described in the complaint in this action and hereinafter described, or such part thereof as may be sufficient to

discharge the mortgage debt, the expenses of sale and the costs and disbursements of this action as provided by the Real Property Actions and Proceedings Law, be sold in one parcel at public auction at _____, in the County of _____, by _____ Esq., who is hereby appointed Referee for that purpose; that said Referee give public notice of the time and place of such sale according to law and the practice of this Court, in the _____, that the plaintiff or any other party to this action may become the purchaser at such sale; that if the Plaintiff or its Assigns shall become the purchaser at such sale it shall not be required to make any deposit thereon; that if any other party becomes the purchaser at such sale, they shall be required to deposit 10% of the bid amount in certified funds with the Referee; that said Referee shall accept a written bid from Plaintiff or any other party, provided it is accompanied by a deposit as provided herein; that said Referee execute and deliver to the purchaser at such sale a deed of the premises sold; that the Referee on receiving the proceeds of the sale deposit said proceeds in his or her I.O.L.A. account maintained for legal clients, and having an office in _____ County, New York, that the Referee thereafter shall forthwith pay therefrom, in accordance with their priority according to law, the taxes, assessments, sewer rents or water rates which are or may become liens on the premises at the time of sale with such interest or penalties which may have lawfully accrued thereon to the date of payment, that the Referee thereafter make the following payments and the Referee's checks drawn for that purpose shall be paid by said depository.

FIRST: The statutory fees of the Referee, as allowed in §8003 of the Civil Practice Law and Rules, not to exceed \$500.00;

SECOND: The expenses of the sale and advertising expenses as shown on bills presented to and certified by the Referee to be correct, duplicate copies of

which shall be filed with this Court;

THIRD: The Referee shall pay to the Plaintiff or the attorneys for the Plaintiff, _____, the sum of \$ _____ adjudged to the Plaintiff for statutory costs and disbursements in this action, with interest thereon from the date hereof, to the date of sale, together with reasonable attorneys' fees in the sum of \$ _____ as provided for in paragraph _____ of the mortgage, and also the sum of \$ _____, the amount reported due to the Plaintiff in the report of the Referee, together with interest thereon at the contract rate from the day after interest was calculated in the Referee's Oath and Report of Amount Due to and including the Judgment entry date, and at the legal rate thereafter, to the date of sale, or so much as the purchase price of the mortgaged premises will pay of the same. Any taxes, assessments, insurance premiums, maintenance and preservation expenses, inspections and any other amount necessarily paid by the Plaintiff to preserve the premises, paid after the date of Referee's computation to the date of delivery of the Referee's Deed, that are not included in any computations herein will be added to the amount due; and

FOURTH: If the Referee intends to apply for a further allowance of the Referee's fees, the Referee may leave upon deposit such amount as will cover such additional allowance to await the further order of this Court after application duly made, such application to be made within fifteen (15) days of transfer of title; and it is further

ORDERED that the appointed referee shall file the completed, signed Foreclosure Action Surplus Monies Form in accordance with the Court's procedures (www.inside-ucs.org/courts/7jd/index/shtml); and it is further

ORDERED, that if the Plaintiff or its assigns is the purchaser of the mortgaged premises at said sale (or if the rights of purchaser shall be assigned to and acquired by the Plaintiff, and a valid assignment thereof is filed with the Referee), 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 mortgaged premises sold upon payment to the Referee of the amounts specified above in clauses "FIRST" and "SECOND", and the amounts of the aforesaid taxes, assessments, sewer rents, water rates, and interest or penalties thereon, or in lieu of the payment of said last mentioned amounts, upon filing with said Referee receipts of the proper municipal authorities showing the payment thereof. The balance of the amount bid, after deducting therefrom the aforesaid amounts paid by the Plaintiff, shall be allowed to the Plaintiff and applied by the Referee to the amounts due to the Plaintiff as specified in item "THIRD" above; and it is further

ORDERED the Referee shall take the receipt of the Plaintiff or the attorneys for the Plaintiff for the amounts paid as directed in item "THIRD" above, and file it with the Referee's report of sale. The Referee shall deposit the surplus moneys, if any, with the Director of Finance/ County Treasurer within five days after the same shall be received and be ascertainable, to the credit of this action, to be withdrawn only on an order of this Court signed by a Justice of this Court. The Referee shall make a report of such sale under oath showing the deposition of the proceeds of the sale and accompanied by the vouchers of the persons to whom payments were made, and shall file the report of sale with the office of the Clerk of the County of _____ within thirty days after completing the sale and executing the proper conveyance to the

purchaser. If the proceeds of the sale are insufficient to pay the total amount due to the Plaintiff as aforesaid, the Plaintiff shall recover from the

Defendant(s) _____

_____, unless discharged in bankruptcy, the whole deficiency or so much thereof as this Court may determine to be just and equitable of the residue of the debt remaining unsatisfied after a sale of the mortgaged premises and the application of the proceeds thereof, provided a motion for a deficiency judgment shall be made pursuant to R.P.A.P.L. §1371; and it is further

ORDERED that the purchaser at said sale be let into possession on production of the Referee’s deed; and it is further

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

ORDERED, ADJUDGED AND DECREED that the annexed “Terms of Sale” are incorporated herein by reference, and made a part hereof, and any reference in said “Terms of Sale” to “this date” shall be read to mean the date of the public auction.

The mortgaged premises are more particularly described in Schedule A annexed hereto and made a part hereof.

Dated: _____, 201_.

Justice Supreme Court

JoAnn Ryrko

From: Barbara Roesch
Sent: Thursday, September 29, 2016 10:01 AM
To: JoAnn Ryrko
Subject: FW: Posting of Your Court Rules on our Intranet Site

Can you send something re: our uniform terms of sale and judgments of foreclosure? Thanks.

From: Susan M. Maleski
Sent: Thursday, September 29, 2016 8:58 AM
To: Barbara Roesch <broesch@nycourts.gov>
Subject: FW: Posting of Your Court Rules on our Intranet Site

From: Ronald W. Pawelczak
Sent: Wednesday, September 28, 2016 4:33 PM
To: SeventhDistrictJudges <seventhdistrictjudges@nycourts.gov>
Cc: SeventhDistrictCourtLeadershipGroup <seventhdistrictcourtleadershipgroup@nycourts.gov>; Jacqueline Sisson <jsisson@nycourts.gov>
Subject: Posting of Your Court Rules on our Intranet Site

We are in the process of developing a Judge's Rules page on the 7th JD Website so that users can determine , what , if any, special rules you may have with respect to the way you want attorneys or filers to proceed in your respective court. I would ask that you please send your Rules to Matthew Witt in Automation with Copy to your Court's Chief Clerk.

Ronald W. Pawelczak
District Executive
161 Hall of Justice
99 Exchange Boulevard
Rochester, NY 14614

Phone: (585) 371-3252
Fax: (585) 371-3266
Cell: (585) 259-8680
rpawelcz@nycourts.gov