

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ONTARIO**

Wells Fargo Bank, N.A.

INDEX NO. 124153-2019

Plaintiff(s),

**ATTORNEY  
AFFIRMATION IN  
SUPPORT OF  
PLAINTIFF'S MOTION  
FOR A DEFAULT  
JUDGMENT AND ORDER  
OF REFERENCE**

v.

Carole Clark, as Administratrix CTA to the Estate of Elizabeth J. Davenport a/k/a Elizabeth Davenport; State of New York; New York State Department of Taxation and Finance and "JOHN DOE", said name being fictitious, it being the intention of Plaintiff to designate any and all occupants of premises being foreclosed herein, and any parties, corporations or entities, if any, having or claiming an interest or lien upon the mortgaged premises

**MORTGAGED PROPERTY:  
4994 North Road  
Canandaigua, NY 14424**

Defendant(s).

COUNTY: Ontario  
SBL #: Section 71.09 Block 2  
Lot 6.00

Patrick Gregorits, pursuant to CPLR 2106 and under the penalties of perjury, affirms as follows:

1. I am an attorney at law and an associate with Shapiro, DiCaro & Barak, LLC the attorneys of record for the Plaintiff. I am fully familiar with the facts, court papers and proceedings of this action based upon a review of the file maintained by my office.

2. True and accurate copies of the following supporting documents are attached hereto:

<b>Document</b>	<b>Tab</b>
Certificate of Merit	Exhibit A
Note	Exhibit B
Mortgage	Exhibit C
Assignments	Exhibit D
Notice(s) of Default	Exhibit E
RPAPL § 1304 90-Day Notice(s)	Exhibit F
Department of Defense Search results	Exhibit G
Summons and Complaint	Exhibit H

Notice of Pendency	Exhibit I
Affidavits of Service	Exhibit J
Affidavit of Service by Mail pursuant to CPLR 3215 (g)(3)(iii)	Exhibit K
Affidavit of Merit and Amount Due	Exhibit L
Copy of the death certificate and Letters	Exhibit M
Notices of Appearance, and Answer or Notices of Return	Exhibit N

Legalback No. 2 - filed contemporaneous with this motion  
Proposed Order of Reference

All personal non-public information has been redacted from the attached supporting documents.

3. This residential mortgage foreclosure action was commenced by filing the summons and complaint in the Ontario County Clerk's Office on May 3, 2019 in the County where the mortgage property is located. The action was brought to foreclose a residential Mortgage executed by Elizabeth J. Davenport, now deceased to Wells Fargo Bank, N.A. on October 31, 2014, in the original amount of \$100,000.00, and was recorded in the Ontario County Clerk's Office on November 5, 2014 at Liber 2581 of Mortgages, page 407.

4. On May 3, 2019, Plaintiff filed a notice of pendency in accordance with RPAPL §1331 and CPLR Article 65, a copy of which is attached hereto as **Exhibit "I"**.

5. The Summons, Complaint and Notice of Pendency are in the form prescribed by statute and contain all the particulars required by law. The Summons complies with the requirements of RPAPL §1320, contains the required notice in boldface type and is in the format required by statute. According to the affidavit of service, the summons was served together with the Complaint. Copies of the Summons, Complaint, Notice of Pendency and affidavits of service are attached hereto as **Exhibit "H"**, **Exhibit "I"** and **Exhibit "J"**.

6. On May 3, 2019, Plaintiff was the Holder of the subject note. See Affidavit of Astra Love-Easter, attached hereto as **Exhibit "L"**.

7. The Certificate of Merit required pursuant to CPLR 3012-b was filed together with supporting documents and is attached hereto as **Exhibit "A"**.
8. The defendant(s)/mortgagor(s) is/are not resident(s) of the property subject to foreclosure. See Affidavit of Dylan J. Frankel attached hereto as **Exhibit "J"**.
9. Defendant(s) were served with the notice required by RPAPL §1303 printed on colored paper together with the summons and complaint printed on white paper. The RPAPL §1303 notice complies with the requirements of that statute, with the title in bold, 20-point type and the text in bold, 14-point type. The RPAPL §1303 notice was delivered to the mortgagors on its own separate page, together with the summons and complaint. Defendant(s) were timely served with the 90-Day Pre-Foreclosure notice required by RPAPL §1304. Plaintiff filed the name, address and telephone number of the Defendant(s), the amount claimed to be due, and the type of loan at issue with the superintendent of banks within three business days of the mailing of the 90-day Pre-Foreclosure notice as required by RPAPL §1306. Copies of these notices and affidavits of service are attached hereto as **Exhibits "F" and "J"**.
10. Plaintiff served an additional copy of the summons in compliance with CPLR 3215(g)(3). The affidavit of service by mail is attached hereto as **Exhibit "K"**.
11. Tenants reside at the mortgaged property. Therefore, Plaintiff requests that Wade Birnbaum be added as named defendants in this action pursuant to RPAPL §1311 and that the caption be amended to add Wade Birnbaum in place of the "JOHN DOE" defendants as party defendants to this action.
12. The following defendant(s) did not answer or appear and their time to answer has expired: State of New York and New York State Department of Taxation and Finance and Wade Birnbaum (sued herein as "JOHN DOE #1"). Accordingly, these defendants are in default.

13. No defendant is an infant. No defendant is in the armed services of the United States of America. Upon information and belief, no defendant is incompetent.

14. A Department of Defense Manpower Data Center search was conducted to determine the current military status of Defendant, Carole Clark, as Administratrix CTA to the Estate of Elizabeth J. Davenport a/k/a Elizabeth Davenport, prior to bringing this application. The information generated from the search indicated that the aforementioned Defendant is not on active duty in the military service of either the United States or an ally. The search was conducted on a date after the default in answering or appearing had occurred for all Defendants and a date shortly before the submission of this Order of Reference application. A copy of said search, together with Affirmant's Affidavit of Military Status for each Defendant herein, is attached hereto as **Exhibit "G"**.

15. The Mortgagor, Elizabeth Davenport died on July 13, 2017. By Letters dated August 11, 2017, Carole Clark was appointed as fiduciary of the Estate of Elizabeth Davenport. A copy of the Death Certificate and Letters are attached hereto as **Exhibit "M"**.

16. The defendant(s) Carole Clark, as Administratrix CTA to the Estate of Elizabeth J. Davenport a/k/a Elizabeth Davenport has appeared, attached hereto as **Exhibit "N"** is a copy of their Notice of Appearance.

17. Plaintiff has not made any previous motion for this or like relief.

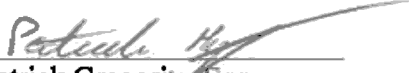
18. Therefore, it is respectfully requested that the Court grant Plaintiff's motion for a Default Judgment and Order of Reference in accordance with RPAPL §1321 and award such other and further relief as the Court may deem just and proper.

**WHEREFORE**, Plaintiff requests an order from this Court:


- a. Appointing a Referee to compute the amount due Plaintiff and to examine whether the mortgaged property known as 4994 North Road, Canandaigua, NY 14424 can be sold in parcels, and make his/her computation and report with all convenient speed pursuant to RPAPL §1321;
- b. Adding Wade Birnbaum as a party defendant to this action;
- c. Determining all non-appearing and non-answering Defendants to be in default;
- d. Granting default judgment in favor of Plaintiff against all other Defendants as to all of the facts and issues described in the Plaintiff's Complaint herein;
- e. Granting such additional relief as the Court may deem just and proper.

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated: 7/31/19  
Monroe County, New York

  
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Associate Attorney  
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Patrick Gregorits, Esq. an attorney at law licensed to practice in the State of New York, and the attorney for Plaintiff in this action, hereby certifies that, to the best of his/her knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the presentation of this pleading, affidavit (or motion if applicable), and the contentions contained herein are not frivolous as defined by 22 NYCRR 130-1.1(c).

  
Patrick Gregorits, Esq.