

At Part \_\_\_\_\_ of the Supreme Court held in  
the County of Ontario, at the Ontario  
Courthouse thereof, on the \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_.

PRESENT: Hon. Brian D. Dennis, J.S.C.  
JUSTICE OF THE SUPREME COURT

Wells Fargo Bank, N.A.,

INDEX NO. 124153-2019

Plaintiff(s),

v.

**ORDER CONFIRMING  
REFEREE REPORT AND  
JUDGMENT OF  
FORECLOSURE AND SALE**

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; Wade Birnbaum,

MORTGAGED PROPERTY:  
4994 North Road  
Canandaigua, NY 14424

Defendant(s).

SBL #: Section 71.09 Block 2  
Lot 6.00

UPON the Summons, Complaint, and Notice of Pendency filed in this action on the 3rd day of May, 2019, on the Additional Notice of Pendency filed on the 9th day of July, 2019, the Notice of Motion dated 11/11/19, the affirmation by Patrick Gregorits, Esq., the affidavit of merit and amount due by Astra Love-Easter, who is Vice President Loan Documentation, duly sworn to on July 22, 2019, together with the exhibits annexed thereto, all in support of Plaintiff's motion for a Judgment of Foreclosure and Sale; and

UPON proof that each of the defendants herein has been duly served with the Summons and Complaint in this action, and has not served any answer to the Complaint nor had their time to do so extended; and it appearing that more than the legally required number of days has elapsed since defendants, Carole Clark, State of New York and New York State Department of Taxation and Finance and Wade Birnbaum, were so served and/or appeared; and Plaintiff having established to the court's satisfaction that a judgment against defendants is warranted; and

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

UPON proof that non-appearing defendants, State of New York and New York State Department of Taxation and Finance and Wade Birnbaum, are not absent, in accordance with RPAPL §1321(2); and

A Referee having been appointed to compute the amount due to Plaintiff upon the bond/note and mortgage set forth in the Complaint and to examine whether the mortgaged property can be sold in parcels; and

UPON reading and filing the Report of Donna M. Cathy Esq dated October 23, 2019, showing the sum of \$92,103.51 due as of the date of said Report and that the mortgaged property may not be sold in parcels; and

UPON proof of due notice of this motion upon all parties entitled to receive same, and upon all the prior proceedings and papers filed herein;

NOW, on motion by Patrick Gregorits, Esq., attorney for the Plaintiff, it is hereby

**ORDERED, ADJUDGED AND DECREED**, that the motion is granted; and it is further

**ORDERED, ADJUDGED AND DECREED**, that the Referee's Report be, and the same is, hereby in all respects ratified and confirmed; 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 of the date of this Judgment, in one parcel, at a public auction at the Ontario County Courthouse, Canandaigua, New York 14424, by and under the direction of Donna M. Cathy, Esq, P.O. Box 551, Waterloo, NY 13165 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 *The Canandaigua Daily Messenger*; 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; 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 the Referee shall then deposit the down payment and proceeds of sale, as necessary, in the Referee's I.O.L.A. account maintained for legal clients, in his/her own name as Referee, in accordance with CPLR 2609; 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, 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 the date of such sale unless otherwise stipulated by all parties to the sale; 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; 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, all taxes, assessments, sewer rents or 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 then deposit the balance of said proceeds of sale in his/her own name as Referee in their I.O.L.A. account maintained for legal clients, and shall thereafter make the following payments in accordance with RPAPL §1354, as follows:

FIRST: The Referee's statutory fees for conducting the sale, in accordance with CPLR 8003(b), not to exceed \$750.00 unless the property sells for \$50,000.00 or more or in the event a sale was cancelled or postponed, Plaintiff shall compensate the Referee in the sum of \$\_\_\_\_\_ for each adjournment or cancellation, unless the Referee caused the delay;

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;

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