

FILED
IN CLERKS OFFICE
U.S. DISTRICT COURT ED. N.Y.
★ **AUG 03 1998** ★

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
-----X
BERKELEY FEDERAL BANK AND TRUST FSB

P.M. _____
TIME A.M. _____

Docket No. CV-96-3014 (DGT)

Index No. 10220/96
(State Court)

Plaintiff,

-against-

**ORDER GRANTING
SUMMARY JUDGMENT AND
APPOINTING A REFEREE
TO COMPUTE
AND
DISMISSING COUNTERCLAIM
AND THIRD-PARTY COMPLAINT**

AMINEE WILLIAMS a/k/a ANNIE SIMMONS
a/k/a AMINEE SIMONS; NYC Parking
Violations Bureau; United States of
America;
"JOHN DOES" and "JANE DOES", said
names being fictitious, parties
intended being possible tenants or
occupants of premises, and
corporations, other entities or
persons who claim, or may claim, a
lien against the premises,

Defendants

-against-

BERKELEY FEDERAL BANK AND TRUST, FSB,
CYNTHIA ROSICKI AND ROSICKI AND
ASSOCIATES, P.C. (Alias 1-50),

Third-Party Defendants
-----X

UPON reading and filing the notice of motion for summary
judgment and appointment of a referee to compute, dated May 1,
1998; the affidavit of TRINI L. DONATO, sworn to on March 11, 1998;
and the affirmation of CYNTHIA ROSICKI, ESQ. dated May 1, 1998; and
the exhibits thereto annexed, all in support thereof, and upon
notice of motion to dismiss counterclaim and third-party complaint,
dated May 1, 1998; and the affirmation of CYNTHIA ROSICKI, ESQ.

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dated May 1, 1998; and the exhibits thereto annexed, all in support thereof; upon the memorandum and order of Honorable David G. Trager, United States District Judge, dated September 9, 1997; and the Judgment of Honorable David G. Trager, United States District Judge, dated September 12, 1997 and filed September 17, 1997, whereby the herein action was removed from the New York State Supreme Court, Queens County to the herein court; and upon the summons and complaint, the affidavits of service thereof upon the several defendants herein, all duly filed, and it appearing to the satisfaction of this Court from the aforesaid documents that this action was brought to foreclose a mortgage on real property situate in the County of Queens, State of New York, and that the entire unpaid balance secured thereby is due and owing; and that the summons and complaint were duly served upon all defendants and that the time prescribed by law to answer has expired, the same not being extended, and it appearing that all defendants are in default or have appeared and waived notice of the within application, except for the defendant(s), AMINEE WILLIAMS a/k/a ANNIE SIMMONS a/k/a AMINEE SIMONS, and LORIAN N. SMITH a/k/a LORIANN SMITH a/k/a LORI SMITH who appeared herein and interposed an answer and affirmative defense to the complaint; and it appearing that none of the defendants herein is an infant, incompetent, or absentee, except DEION RICHARD SMITH WRIGHT and DANIEL JAY WRIGHT, both of whom were duly served with the summons and complaint pursuant to CPLR section 309(a); and that a notice of pendency of this action was filed within twenty (20) days prior hereto, and that since the

filing of said notice, the summons and complaint have not been amended by adding new parties to the action, or so as to affect premises not described in said notice, or so as to extend the claim of the plaintiff against the mortgaged premises; and upon the Memorandum Decision of Honorable Joan Marie Durante, Justice Supreme Court of the State of New York, Queens County, dated October 23, 1996, whereby defendants' Motion to Dismiss was denied; and upon all the pleadings and papers heretofore filed herein, and the proceedings heretofore had herein; and this matter having come on regularly to be heard before this Court, and there being no opposition submitted thereto, and due deliberation having been had,

NOW, upon motion of ROSICKI, ROSICKI & ASSOCIATES, P.C., attorneys for plaintiff, and third-party defendants, it is

ORDERED, that the answer and affirmative defenses and all counterclaims interposed on behalf of the defendant(s), AMINEE WILLIAMS a/k/a ANNIE SIMMONS a/k/a AMINEE SIMONS, and LORIAN N. SMITH a/k/a LORIANN SMITH a/k/a LORI SMITH, be and the same are hereby stricken; and it is further

ORDERED, that the "Notice of Entry Third Party Defendant", summons, and answer with counterclaims, interposed on behalf of the defendant(s), AMINEE WILLIAMS a/k/a ANNIE SIMMONS a/k/a AMINEE SIMONS, and LORIAN N. SMITH a/k/a LORIANN SMITH a/k/a LORI SMITH, as to third-party defendants, BERKELEY FEDERAL BANK AND TRUST FSB, CYNTHIA ROSICKI, AND ROSICKI AND ASSOCIATES, P.C., n/k/a ROSICKI, ROSICKI AND ASSOCIATES, P.C., are hereby dismissed as to said third party defendants; and it is further

ORDERED, that the answer interposed by defendant(s) AMINEE WILLIAMS, a/k/a ANNIE SIMMONS a/k/a AMINEE SIMONS and LORIAN N. SMITH a/k/a LORIANN SMITH a/k/a LORI SMITH be and hereby is deemed the usual appearance and waiver in foreclosure, requiring service of only Notice of Sale, Notice of Proceedings for Surplus Monies, and Notice of Discontinuance of Action upon said defendant(s); and it is further

ORDERED, that defendant(s)' request for injunctive relief including a temporary restraining order and preliminary injunction on protecting documents is hereby denied; and it is further

ORDERED, that defendant(s)' demand for a jury trial is hereby denied; and it is further

ORDERED, that this action be and the same is hereby referred to Andrew C. Morganstern, of 114 Old Country Road, Suite 115, Mineola, New York 11501 to ascertain and compute the amount due to plaintiff herein for principal, interest, water and sewer rentals, insurance premiums, taxes, repairs to, boarding, securing, protecting and maintaining the premises, mortgage insurance premiums, if any, and any other charges, except attorney's fees, and to examine and report whether the mortgage premises should be sold in one parcel, and that on the filing of the Referee's Report and confirmation thereof, plaintiff have final judgment of foreclosure and sale, and for all costs, disbursements and allowances as allowed by law, and that the said Referee make his report to this court with all convenient speed; and it is further

ORDERED, that the caption be amended by striking the names of "JOHN DOE" and "JANE DOE", such names being fictitious, and by adding in place thereof the names of Laura Smith; Danny Right; Lorian N. Smith a/k/a Loriann Smith a/k/a Lori Smith; Lorian N. Smith a/k/a Loriann Smith a/k/a Lori Smith, as Custodian and Guardian for Daniel Jay Wright and Deion Richard Smith Wright; Daniel Jay Wright, an infant; and Deion Richard Smith Wright, an infant, who plaintiff has ascertained to be tenants of the premises, and that the caption be further amended by substituting OCWEN FEDERAL BANK FSB f/k/a BERKELEY FEDERAL BANK AND TRUST FSB as plaintiff in place of BERKELEY FEDERAL BANK AND TRUST FSB; and that the caption be further amended to strike third-party defendants, BERKELEY FEDERAL BANK AND TRUST, FSB, CYNTHIA ROSICKI, and ROSICKI AND ASSOCIATES P.C. n/k/a ROSICKI, ROSICKI AND ASSOCIATES, P.C. (Alias 1-50), from the caption; and all papers and proceedings heretofore filed herein shall be deemed amended accordingly; and it is further

ORDERED, that the caption herein be and hereby is amended to read as follows:

Docket No.: CV-96-3014 (DGT)
Index No.: 10220/96 (State Court)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

BERKELEY FEDERAL BANK AND TRUST FSB,

Plaintiff,

-against-

AMINEE WILLIAMS a/k/a ANNIE SIMMONS
a/k/a AMINIEE SIMONS, et al

Defendants

-against-

BERKELEY FEDERAL BANK AND TRUST, FSB,
CYNTHIA ROSICKI AND ROSICKI AND ASSOCIATES,
P.C. (Alias 1-50),

Third-Party Defendants

**ORDER GRANTING SUMMARY JUDGMENT AND
APPOINTING A REFEREE TO COMPUTE
AND DISMISSAL OF COUNTERCLAIM AND THIRD-PARTY COMPLAINT**

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July 22, 1998

Chambers, Hon. David G. Trager
United States District Court
225 Cadman Plaza East
Brooklyn, NY 11201

RE: BERKELEY FEDERAL BANK & TRUST, FSB -v- AMINEE WILLIAMS, et al
Docket No.: CV 96 3014 (DGT)
Index No.: 10220/96 (State Court)
Motion for Summary Judgment & Appointment of a Referee
Motion to Dismiss Counterclaim & Third-Party Complaint

Dear Sir/Madam:

This office represents Ocwen Federal Bank, FSB f/k/a Berkeley Federal Bank & Trust FSB, with regard to the above captioned action, currently before Hon. David G. Trager.

The following motions are currently before the Court:

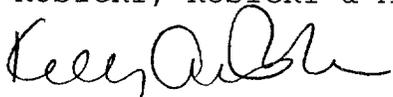
1. Motion for Summary Judgment and Appointment of a Referee to Compute; and
2. Motion to Dismiss Counterclaim and Third-Party Complaint

At the direction of Chambers, enclosed herewith kindly find two copies of one proposed order granting the requested relief of both motions.

Also enclosed herewith, kindly find a self addressed stamped envelope. If possible, please forward a copy of the signed order to our office.

Thank you.

Yours truly,
ROSICKI, ROSICKI & ASSOCIATES, P.C.


Kelly Ann Poole

enc.

cc: Aminee Williams
222-30 141st Avenue
Laurelton, NY 11413

Lorian N. Smith a/k/a Loriann Smith a/k/a Lori Smith
222-30 141st Avenue
Laurelton, NY 11413