

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SARATOGANationstar Mortgage LLC d/b/a Champion Mortgage
Company,

Plaintiff(s),

v.

Montgomery County Treasurer, as the Limited
Administrator of the Estate of Emily Califano a/k/a Emily
Jane Califano; The United States of America acting through
The Secretary of Housing and Urban Development; Richard
Hess; Jeffrey Hess; Mark Hess; Lawrence Hess; Elaine
Yaksta; Scott Hess; John Dence; James Dence; Dorothy
Scherenberger; Deborah Pietrantozzi; Kathleen James; John
Hess; Stephen Hess; Alfred Williams a/k/a Alfred Robert
Williams; New York State Department of Taxation and
Finance,

Defendant(s).

INDEX NO. 20157

**ATTORNEY
AFFIRMATION IN
SUPPORT OF PLAINTIFF'S
MOTION TO CONFIRM
REFEREE REPORT AND
FOR A JUDGMENT OF
FORECLOSURE AND SALE**

MORTGAGED PROPERTY:
712 Swaggertown Road
Scotia, NY 12302
COUNTY: Saratoga
SBL #: Section 256. Block 1
Lot 66

Nicole DiStasio, pursuant to CPLR 2106 and under penalties of perjury, hereby affirms as follows:

1. I am an attorney at law and an associate of LOGS Legal Group LLP f/k/a Shapiro, DiCaro & Barak, LLC, the attorneys of record for Plaintiff Nationstar Mortgage LLC d/b/a Champion Mortgage Company. 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. This is a foreclosure action. The Plaintiff is moving the court to confirm the Referee's Report made in accordance with RPAPL §1321 and for a Judgment of Foreclosure and Sale pursuant to RPAPL §1351 that directs the distribution of the proceeds of sale in accordance with RPAPL §1354.

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

Document	Tab
Certificate of Merit (<i>not applicable</i>)	Exhibit A
Note	Exhibit B
Home Equity Conversion Mortgage	Exhibit C
Assignment	Exhibit D
Notice of Default	Exhibit E
RPAPL §1304 90-Day Notice (<i>not applicable</i>)	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
Affirmation of Regularity	Exhibit M
Order of Reference	Exhibit N
Notice of Entry of Order of Reference	Exhibit O
Referee's Oath and Report of Amount Due	Exhibit P
Attorney Fee Affirmation	Exhibit Q
Copy of Certificate of Death and Petition/Letters of Administration	Exhibit R
Supplemental Summons and Amended Complaint	Exhibit S
Order to Amend Summons and Complaint	Exhibit T
Notices of Appearance	Exhibit U

Legalback No. 2 - filed contemporaneously with this application
Costs and Disbursements of Plaintiff with Supporting Invoices

Legalback No. 3 - filed contemporaneously with this application
Proposed Judgment of Foreclosure and Sale

PROCEDURAL HISTORY

4. This residential mortgage foreclosure action was commenced by filing the summons and complaint in the Saratoga County Clerk's Office on January 5, 2015, the County where the mortgaged property is located. The action was brought to foreclose a residential Home Equity Conversion Mortgage commonly known as a "Reverse Mortgage", executed by Emily Jane Califano, as Mortgagor(s) to Wells Fargo Bank, N.A., as Mortgagee, to secure the sum of \$243,000.00, dated February 2, 2007 and recorded in the Saratoga County Clerk's Office on February 22, 2007 in Instrument Number: 2007007401. The Mortgage was transferred to

Nationstar Mortgage LLC d/b/a Champion Mortgage Company, and said transfer was memorialized by an Assignment of Mortgage executed on September 12, 2017 and recorded September 12, 2017 in Instrument Number: 2017029031. Copies of the Note, Home Equity Conversion Mortgage and Assignment are attached hereto as **Exhibit "B"**, **Exhibit "C"**, and **Exhibit "D"**.

5. On January 5, 2015, Plaintiff filed a notice of pendency in accordance with RPAPL §1331 and CPLR Article 65. On October 13, 2017 and November 9, 2020, Plaintiff re-filed the notice of pendency in accordance with RPAPL §1331 and CPLR Article 65. Copies are attached hereto as **Exhibit "I"**.

6. The summonses, complaints, and notices of pendency are in the form prescribed by statute and contain all of the particulars required by law. The summonses comply with the requirements of RPAPL §1320, contain the required notice in boldface type and are in the format required by statute.

7. On January 5, 2015, Plaintiff was Holder of the subject note. See Affidavit of Erin Naylor, attached hereto as **Exhibit "L"**.

8. According to the affidavits of service filed in the Saratoga County Clerk's Office, the summons was served with the complaint. 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. Copies of the affidavits of service are attached hereto as **Exhibit "J"**.

9. Plaintiff served defendants with copies of the summons in compliance with CPLR 3215(g)(3). The affidavit of service by mail pursuant to CPLR §3215(g)(3) is attached hereto as **Exhibit “K”**.

10. 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.

11. The Mortgagor, Emily Califano a/k/a Emily Jane Califano, died on January 4, 2016. By Limited Letters of Administration dated February 1, 2019, Shawn J. Bowerman, Montgomery County Treasurer was appointed as fiduciary of the Estate of Emily Califano a/k/a Emily Jane Califano. A copy of the Certificate of Death and Letters of Administration are attached hereto as **Exhibit “R”**.

12. An Order to Amend Summons and Complaint was filed on September 18, 2019. A copy is attached hereto as **Exhibit “T”**.

13. The Supplemental Summons and Amended Complaint were filed on January 23, 2020 and copies are attached hereto as **Exhibit “S”**.

14. The United States of America appeared in this action. A copy of the Notice of Appearance is attached hereto as **Exhibit “W”**.

15. On November 3, 2021, the Plaintiff moved for an Order of Reference. Plaintiff’s motion was granted by the Court by Order dated January 25, 2022. A copy of the Order of Reference is attached hereto as **Exhibit “N”**.

16. Plaintiff mailed Notice of Entry of the Order of Reference to the defendant(s) or their attorney(s) on February 2, 2022. A copy of the Notice of Entry is attached hereto as **Exhibit “O”**.

17. Per this Court's Order of Reference, defendant(s), Montgomery County Treasurer and Richard Hess and Mark Hess and Jeffrey Hess and Lawrence Hess and Elaine Yaksta and Scott Hess and John Dence and James Dence and Dorothy Scherenberger and Deborah Pietrantozzi and Sharon James and Kathleen James and John Hess and Stephen Hess and Alfred Williams and New York State Department of Taxation and Finance were deemed to be in default.

18. This court appointed Elena De Fio Kean, Esq., as Referee, to compute the amount due the Plaintiff and to examine and report whether the mortgaged property can be sold in parcels.

19. On February 9, 2022, the Referee executed an Oath and Report of Amount Due which computed the amount due the Plaintiff to be \$263,784.12 as of March 31, 2021, and determined that the property should be sold as one parcel. The Referee's Oath and Report are attached hereto as **Exhibit "P"**. Plaintiff is entitled to interest at the note rate until the Judgment of Foreclosure and Sale is entered and at the statutory default rate thereafter.

20. No previous motion for a Judgment of Foreclosure and Sale has been made.

PLAINTIFF IS ENTITLED TO A JUDGMENT OF FORECLOSURE AND SALE

21. In conjunction with the motion for an Order of Reference previously granted by this Court, Plaintiff established all the required elements for a foreclosure. Plaintiff now requests that the property be sold pursuant to RPAPL §1351 and that the sale proceeds be distributed in accordance with RPAPL §1354.

22. RPAPL §1354(2) requires the Referee conducting the sale to pay out of the proceeds all taxes, assessments, and water rates that are liens upon the property and to redeem the property from any sales for unpaid taxes, assessments, or water rates that have not become absolute. At the time of sale, transfer tax is not a lien upon the property nor is it an expense of sale, as that term is used in RPAPL §1354(1). Rather, transfer tax is an expense of recording the

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