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SHORT FORM ORDER

INDEX
NO.: 05557-10

SUPREME COURT - STATE OF NEW YORK
IAS PART 48 - SUFFOLK COUNTY

PRESENT: Hon. HECTOR D. LASALLE
Justice of the Supreme Court

ONEWEST BANK FSB,

Plaintiff,

-against-

THOMAS MAINELLA; "JOHN DOE #1-5" AND "JANE DOE #1-5" said names being fictitious, it being the intention of Plaintiff to designate any and all occupants, tenants, persons or corporations, if any, having or claiming an interest in or lien upon the premises being foreclosed herein,

Defendants.

Motion Date: 9-7-12
Adj. Date: _____
Mot. Seq. #001-MotD

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Upon the following papers numbered 1 to 13 read on this motion for summary judgment and an order of reference; Notice of Motion/Order to Show Cause and supporting papers 1 - 6; Notice of Cross Motion and supporting papers _____; Answering Affidavits and supporting papers 7 - 10; Replying Affidavits and supporting papers 11 - 13; Other _____; (~~and after hearing counsel in support and opposed to the motion~~) it is,

ORDERED that this motion by the plaintiff for, inter alia, an order: (1) pursuant to CPLR 3212 awarding summary judgment in its favor against the defendant Thomas Mainella and striking his answer; (2) pursuant to RPAPL § 1321 appointing a referee to (a) compute amounts due under the subject mortgage; and (b) examine and report whether the subject premises should be sold in one parcel or multiple parcels; and (3) amending the caption, is determined as indicated below; and it is

ORDERED that the plaintiff is directed to file a successive notice of pendency, which shall include a reference to the Legal Description (Schedule "A") recorded with the mortgage, reformed herein by referring to "lot numbers 399 to 407, in Block 4," instead of "lot numbers 399 to 4007, in Block 4", within sixty (60) days of the date herein (*see*, CPLR 6513; 6516[a]; ***Aames Funding Corp. v Houston***, 57 AD3d 808, 872 NYS2d 134 [2d Dept 2008], *lv dismissed* 12 NY3d 896, 884 NYS2d 677 [2008]; ***EMC Mtge. Corp. v Stewart***, 2 AD3d 772, 769 NYS2d 408 [2d Dept 2003]; ***Horowitz v Griggs***, 2 AD3d 404, 767 NYS2d 860 [2d Dept 2003]); and it is

ORDERED that the plaintiff shall submit with the proposed judgment of foreclosure, a certificate of conformity with respect to the affidavits of the plaintiff's officer, executed outside the State of New York (*see*, CPLR 2309[c]; ***U.S. Bank Natl. Assn. v Dellarmo***, 94 AD3d 746, 942 NYS2d 122 [2d Dept 2012]); and it is further

ORDERED that the plaintiff is directed to serve a copy of this Order with notice of entry upon all parties who have appeared herein and not waived further notice pursuant to CPLR 2103(b)(1), (2) or (3) within thirty (30) days of the date herein, and to file the affidavits of service with the Clerk of the Court.

This is an action to foreclose a mortgage on residential real property known and described as 12 Oxford Avenue, Melville, New York 11747 (the property). The defendant Thomas Mainella (the defendant mortgagor) executed a fixed rate balloon note dated June 14, 2006 (the note) in favor of IndyMac Bank, F.S.B. (IndyMac) in the principal sum of $408,000.00. To secure said note, the defendant mortgagor gave IndyMac a mortgage also dated June 14, 2006 (the mortgage) on the property. The mortgage indicates that Mortgage Electronic Registration Systems, Inc. (MERS) was acting solely as a nominee for IndyMac and its successors and assigns and that, for the purposes of recording the mortgage, MERS was the mortgagee of record. The note contains an undated, blank endorsement without recourse by IndyMac. By assignment dated January 29, 2010 and recorded on February 19, 2010, MERS as nominee for IndyMac transferred its interest in the mortgage to OneWest Bank, F.S.B. (the plaintiff).

The defendant mortgagor allegedly defaulted on his monthly payment of interest due on June 1, 2009, and each month thereafter. After the defendant mortgagor allegedly failed to cure his default, the plaintiff commenced the instant action by the filing of a summons and verified complaint on February 9, 2010. Issue was joined by the service of the defendant mortgagor's verified answer sworn to on February 23, 2010. By his answer, the defendant mortgagor denies all of the allegations in the complaint and asserts eleven affirmative defenses, consisting of, among other things, failure to state a cause of action, lack of legal capacity/standing, failure to allege a viable cause of action, a release, lack of subject matter jurisdiction, unclean hands as a result of fraudulent misrepresentations, unlicensed to conduct business in New York, non-compliance with CPLR 2309(c), unconscionable loan terms, and failure to comply with: the provisions of Banking Law §§ 6-l, 6-m; and 590(b), RPAPL §§ 1302, 1303, and 1304; CPLR 3215(g)(3); Federal Equal Credit Opportunity Act; Real Estate Settlement Procedures Act; Truth In Lending Act; Federal Fair Housing Act, 42 USC § 3604, 3605; CPLR 3408; Home Ownership and Equity Protection Act; and General Business Act § 349, lack of an agency relationship between the assignor and assignee, and the property was allegedly an excluded asset of the assumption agreement between the plaintiff and Federal Deposit Insurance Corporation. The remaining defendants have neither answered nor appeared in this action.

The plaintiff now moves for, inter alia, an order: (1) pursuant to CPLR 3212 awarding summary judgment in its favor against the defendant Thomas Mainella and striking his answer; (2) pursuant to RPAPL § 1321 appointing a referee to (a) compute amounts due under the subject mortgage; and (b) examine and report whether the subject premises should be sold in one parcel or multiple parcels; and (3) amending the caption. In response, the defendant mortgagor has filed opposition papers. A reply has been

filed by the plaintiff.

In support of the motion, the plaintiff proffers the pleadings, the mortgage, the note, the assignment, a notice of default dated July 30, 2009, a 90-day notice dated May 5, 2009, an affidavit of merit, an affidavit in support, and an affirmation by counsel. In the complaint, the plaintiff alleges, among other things, that it is a banking corporation licensed and organized pursuant to the laws of the United States of America, and that it is the owner of record of the bond/note and the mortgage securing the property. In the affidavit of merit, an officer of the plaintiff alleges, inter alia, that she has knowledge of the facts and circumstances herein by her review of the plaintiff's records concerning this matter. According to the officer, the instant mortgage loan has been in default continuously since June 1, 2009. The plaintiff provided a notice of default as well as a 90-day notice to the defendant mortgagor reminding him of his default and advising him of the potential legal consequences if he failed to timely cure his default. The officer further alleges, inter alia, that the 90-day pre-foreclosure notice was sent by registered or certified mail and also by first class mail to defendant mortgagor at his last known address, and if different, to the residence that is the subject of the foreclosure. In the affidavit in support, plaintiff's other officer alleges that, based upon his review of the plaintiff's business records, the plaintiff is the owner of, or otherwise entitled to enforce, the note. In his affirmation, counsel avers that the assignment of the mortgage by MERS as nominee for IndyMac to the plaintiff dated January 29, 2010 was recorded in the Suffolk County Clerk's Office on March 19, 2010. With respect to the ancillary relief requested by the plaintiff, counsel requests that "Schedule A" of the legal description recorded with the mortgage be reformed to correct a scrivener's error in that the first paragraph should read, among other things, "lot numbers 399 to 407, in Block 4," instead of "lot numbers 399 to 4007, in Block 4".

In opposition to the motion, the defendant submits, inter alia, an affidavit by the defendant mortgagor and an affirmation by counsel. In his affidavit, the defendant mortgagor alleges that he missed his monthly mortgage payment to the plaintiff in June, 2009 when he sustained a significant income reduction. After his default, he attempted to make a payment to the plaintiff, but that it was rejected because it was not in the form of a certified check. The defendant mortgagor requests that the plaintiff extend a loan modification to him so that he may resume his payments. In his affirmation, counsel requests the Court to schedule an additional settlement conference, asserting that a loan modification application is currently being prepared by the defendant mortgagor for submission to the plaintiff.

In reply, the plaintiff opposes the request for an additional settlement conference, arguing, inter alia, that full consideration has already been given to this case by virtue of the five settlement conferences which were already held. Counsel further avers that this case was ultimately dismissed from the conference program because the defendant mortgagor failed to produce documentation required for consideration of a loan modification.

A plaintiff in a mortgage foreclosure action establishes a prima facie case for summary judgment by submission of the mortgage, the note, bond or obligation, and evidence of default (*see*, ***Valley Natl. Bank v Deutsche***, 88 AD3d 691, 930 NYS2d 477 [2d Dept 2011]; ***Wells Fargo Bank v Karla***, 71 AD3d 1006, 896 NYS2d 681 [2d Dept 2010]; ***Wash. Mut. Bank, F.A. v O'Connor***, 63 AD3d 832, 880 NYS2d 696 [2d Dept 2009]). The burden then shifts to the defendant to demonstrate "the existence of a triable issue of fact as to a bona fide defense to the action, such as waiver, estoppel, bad faith, fraud, or

oppressive or unconscionable conduct on the part of the plaintiff" (***Capstone Bus. Credit, LLC v Imperia Family Realty, LLC***, 70 AD3d 882, 883, 895 NYS2d 199 [2d Dept 2010]).

Where the issue of standing is raised by a defendant, a plaintiff must prove its standing in order to be entitled to relief (*see*, ***CitiMortgage, Inc. v Rosenthal***, 88 AD3d 759, 931 NYS2d 638 [2d Dept 2011]). A plaintiff has standing where it is the holder or assignee of both the subject mortgage and of the underlying note at the time the action is commenced (*see*, ***Bank of N.Y. v Silverberg***, 86 AD3d 274, 926 NYS2d 532 [2d Dept 2011]; ***U.S. Bank, N.A. v Collymore***, 68 AD3d 752, 890 NYS2d 578 [2d Dept 2009]). "As a general matter, once a promissory note is tendered to and accepted by an assignee, the mortgage passes as an incident to the note" (***Bank of N.Y. v Silverberg***, 86 AD3d 274, *supra* at 280; *see*, ***Mortgage Elec. Registration Sys., Inc. v Coakley***, 41 AD3d 674, 838 NYS2d 622 [2d Dept 2007]). "By contrast, a transfer of a mortgage without an assignment of the underlying note or bond is a nullity, and no interest is acquired by it" (***Bank of N.Y. v Silverberg***, 86 AD3d 274, *supra* at 280; *see*, ***LaSalle Bank Natl. Assn. v Ahearn***, 59 AD3d 911, 875 NYS2d 595 [3d Dept 2009]). "Either a written assignment of the underlying note or the physical delivery of the note prior to the commencement of the foreclosure action is sufficient to transfer the obligation" (***U.S. Bank, N.A. v Collymore***, 68 AD3d 752, *supra* at 754).

By its submissions, the plaintiff established its prima facie entitlement to summary judgment on the complaint (*see*, CPLR 3212; RPAPL § 1321; ***HSBC Bank USA, N.A. v Schwartz***, 88 AD3d 961, 931 NYS2d 528 [2d Dept 2011]; ***Countrywide Home Loans, Inc. v Delphonse***, 64 AD3d 624, 883 NYS2d 135 [2d Dept 2009]). The plaintiff produced the endorsed note and the mortgage executed by the defendant mortgagor, the assignment, as well as evidence of nonpayment (*see*, ***Fed. Home Loan Mtge. Corp. v Karastathis***, 237 AD2d 558, 655 NYS2d 631 [2d Dept 1997]; ***First Trust Natl. Assn. v Meisels***, 234 AD2d 414, 651 NYS2d 121 [2d Dept 1996]).

The plaintiff also demonstrated that, as holder of the note with proper endorsement, and as the assignee of the mortgage, it has standing to commence this action (*see*, ***Bank of New York v Silverberg***, 86 AD3d 274, *supra*; ***First Trust Natl. Assn. v Meisels***, 234 AD2d 414, *supra*). The plaintiff submitted, inter alia, affidavit from two of its officers wherein it is alleged, inter alia, that the plaintiff is the holder and servicer of the note. Additionally, the documentary evidence submitted includes, as indicated above, the note transferred via an endorsement in blank (*see*, ***Slutsky v Blooming Grove Inn, Inc.***, 147 AD2d 208, 542 NYS2d 721 [2d Dept 1989]). The effect of an endorsement is to make the note "payable to bearer" pursuant to UCC § 1-201(5) (*see*, UCC 3-104; ***Franzese v Fidelity N.Y., FSB***, 214 AD2d 646, 625 NYS2d 275 [2d Dept 1995]). When an instrument is indorsed in blank (and thus payable to bearer), it may be negotiated by transfer of possession alone (*see*, UCC § 3-202; § 3-204; § 9-203[g]). Furthermore, UCC § 9-203(g) explicitly provides that the assignment of an interest of the seller or grantor of a security interest in the note automatically transfers a corresponding interest in the mortgage to the assignee. Further, the assignment dated January 29, 2010 memorialized the transfer of the mortgage and note to the plaintiff. Thus, the plaintiff established that it had possession of the note, prior to the commencement of the action, and was the holder thereof as such note contained an endorsement in blank on the face thereof.

Additionally, the plaintiff submitted sufficient proof to establish, prima facie, that the remaining affirmative defenses set forth in the defendant mortgagor's answer are subject to dismissal due to their

unmeritorious nature (*see*, ***Becher v Feller***, 64 AD3d 672, 884 NYS2d 83 [2d Dept 2009]; ***Wells Fargo Bank Minn., Natl. Assn. v Perez***, 41 AD3d 590, 837 NYS2d 877 [2d Dept 2007]; ***Coppa v Fabozzi***, 5 AD3d 718, 773 NYS2d 604 [2d Dept 2004] [*no triable issue of fact raised as to the merits of unsupported affirmative defenses*]; *see also*, ***Wells Fargo Bank, N.A. v Van Dyke***, 101 AD3d 638, 958 NYS2d 331 [1st Dept 2012] [*foreclosing plaintiff has no obligation to modify loan*]; ***Gillman v Chase Manhattan Bank, N.A.***, 73 NY2d 1, 537 NYS2d 787 [1988]; ***Baron Assoc., LLC v Garcia Group Enters.***, 96 AD3d 793, 946 NYS2d 611 [2d Dept 2012] [*unconscionability not a defense*]; ***Patterson v Somerset Invs. Corp.***, 96 AD3d 817, 817, 946 NYS2d 217 [2d Dept 2012] ["*a party who signs a document without any valid excuse for having failed to read it is 'conclusively bound' by its terms*"]; ***Emigrant Mtge. Co, Inc. v Fitzpatrick***, 95 AD3d 1169, 945 NYS2d 697 [2d Dept 2012] [*insufficient evidence presented to raise a triable issue of fact as to whether the plaintiff made materially misleading statements when loan documents were clearly written*]; ***Argent Mtge. Co., LLC v Mentesana***, 79 AD3d 1079, 915 NYS2d 951 [2d Dept 2010] [*unaffordability of loan will not support damages claim against lender and is not a defense to a foreclosure action*]; ***Grogg v South Rd. Assocs., L.P.***, 74 AD3d 1021, 907 NYS2d 22 [2d Dept 2010] [*the mere denial of receipt of the notice of default is insufficient to rebut the presumption of delivery*]; ***Morales v AMS Mtge. Servs., Inc***., 69 AD3d 691, 692, 897 NYS2d 103 [2d Dept 2010] [*CPLR 3016[b] requires that the circumstances of fraud be "stated in detail," including specific dates and items*]; ***CFSC Capital Corp. XXVII v W. J. Bachman Mech. Sheet Metal Co.***, 247 AD2d 502, 669 NYS2d 329 [1998], *lv dismissed* 92 NY2d 919, 680 NYS2d 459 [1998]; ***Connecticut Natl. Bank v Peach Lake Plaza***, 204 AD2d 909, 612 NYS2d 494 [3d Dept 1994] [*defense based upon the doctrine of unclean hands lacks merit where a defendant fails to come forward with admissible evidence of showing immoral or unconscionable behavior*]; ***Charter One Bank, FSB v Leone***, 45 AD3d 958, 845 NYS2d 513 [3d Dept 2007] [*no competent evidence of an accord and satisfaction*]).

As the plaintiff duly demonstrated its entitlement to judgment as a matter of law, the burden of proof shifted to the defendant mortgagor (*see*, ***HSBC Bank USA v Merrill***, 37 AD3d 899, 830 NYS2d 598 [2007], *lv dismissed* 8 NY3d 967, 836 NYS2d 540 [2007]). Accordingly, it was incumbent upon the defendant mortgagor to produce evidentiary proof in admissible form sufficient to demonstrate the existence of a triable issue of fact as to a bona fide defense to the action (*see*, ***Aames Funding Corp. v Houston***, 44 AD3d 692, 843 NYS2d 660 [2007], *lv denied* 10 NY3d 704, 857 NYS2d 37 [2008]; ***Baron Assoc., LLC v Garcia Group Enters., Inc.***, 96 AD3d 793, *supra*; ***Wash. Mut. Bank v Valencia***, 92 AD3d 774, 939 NYS2d 73 [2d Dept 2012]; ***Grogg v South Rd. Assocs., LP***, 74 AD3d 1021, *supra*). In instances where a defendant fails to oppose a motion for summary judgment, the facts, as alleged in the moving papers, may be deemed admitted and there is, in effect, a concession that no question of fact exists (*see generally*, ***Kuehne & Nagel, Inc. v Baiden***, 36 NY2d 539, 369 NYS2d 667 [1975]; *see also*, ***Madeline D'Anthony Enters., Inc. v Sokolowsky***, 101 AD3d 606, 957 NYS2d 88 [1st Dept 2012]; ***Argent Mtge. Co., LLC v Mentesana***, 79 AD3d 1079, *supra*; ***Madison Park Invs., LLC v Atlantic Lofts Corp.***, 33 Misc3d 1215A, 941 NYS2d 538 [Sup Ct, Kings County 2011]).

In opposition to the motion, the defendant mortgagor has offered no proof or arguments in support of any of his pleaded defenses; instead, he requests an additional foreclosure settlement conference. In compliance with CPLR 3408 a series of settlement conferences were held in this Court's Foreclosure Conference Part on September 2, November 3 and December 20, 2010. On December 20, 2010, this case

was dismissed from the conference program as a loan modification or other settlement had not been achieved. An additional settlement conference was held before Part 48 on July 13, 2012 and adjourned a final time to October 19, 2012 for a status conference, at which time this action was again referred as an IAS case. Accordingly, the conference requirement imposed upon the Court by CPLR 3408 and/or the Laws of 2008, Ch. 472 § 3-a as amended by Laws of 2009 Ch. 507 § 10 has been satisfied. No further conference is required under any statute, law or rule. Accordingly, the defendant mortgagor's request for an additional mandatory settlement conference, which was improperly asserted in his opposition papers and served without the benefit of a cross motion, is denied (*see*, CPLR 2215; *see also*, ***Citimortgage Inc. v Lepore***, 2012 NY Misc LEXIS 4282, 2012 WL 3947031, 2012 NY Slip Op 32290[U] [Sup Ct, Suffolk County 2012]).

In any event, the defendant mortgagor is not entitled to a judicially mandated loan modification, as a foreclosing plaintiff has no obligation to modify the terms of its loan before or after a default in payment (*see*, ***Wells Fargo Bank, N.A. v Van Dyke***, 101 AD3d 638, 958 NYS2d [1st Dept 2012]; ***EMC Mtge. Corp. v Stewart***, 2 AD3d 772, *supra*; ***United Cos. Lending Corp. v Hingos***, 283 AD2d 764, 724 NYS2d 134 [3d Dept 2001]; ***First Fed. Sav. Bank v Midura***, 264 AD2d 407, *supra*; ***OneWest Bank, FSB v Davies***, 38 Misc3d 1230[A], 2013 NY Misc LEXIS 921, 2013 WL 846573, 2013 NY Slip Op 50341[U] [Sup Ct, Suffolk County 2013]; ***Citimortgage Inc. v Lepore***, 2012 NY Slip Op 32290[U], *supra*; ***JP Morgan Chase Bank, N.A. v Ilardo***, 36 Misc3d 359, 940 NYS2d 829 [Sup Ct, Suffolk County 2012]).

Thus, even when viewed in the light most favorable to the defendant mortgagor, his submissions are insufficient to raise any genuine question of fact requiring a trial on the merits of the plaintiff's claims for foreclosure and sale, and insufficient to demonstrate any bona fide defenses (*see*, CPLR 3211[e]; *see*, ***Rossrock Fund II, L.P. v Commack Inv. Group, Inc.***, 78 AD3d 920, 912 NYS2d 71 [2d Dept 2010]; ***Neighborhood Hous. Servs. N.Y. City, Inc. v Meltzer***, 67 AD3d 872, 889 NYS2d 627 [2d Dept 2009]; ***Cochran Inv. Co. Inc. v Jackson***, 38 AD3d 704, 834 NYS2d 198 [2d Dept 2007]). The plaintiff, therefore, is awarded summary judgment in its favor against the defendant mortgagor (*see*, ***Fed. Home Loan Mtge. Corp. v Karastathis***, 237 AD2d 558, *supra*; *see also*, ***2 N. St. Corp. v Getty Saugerties Corp.***, 68 AD3d 1392, 892 NYS2d 217 [2009], *lv denied* 14 NY3d 706, 899 NYS2d 755 [2010]). Accordingly, the defendant mortgagor's answer, and the affirmative defenses enumerated "second" and "fourth" through "eleventh" contained therein, are stricken.

By his first and third affirmative defenses, the defendant mortgagor asserts that the complaint fails to state a cause of action, however, the defendant mortgagor has not cross moved to dismiss the complaint on this ground (*see*, ***Butler v Catinella***, 58 AD3d 145, 868 NYS2d 101 [2d Dept 2008]), and, in any event, the plaintiff has established its prima facie entitlement to summary judgment as indicated above. Therefore, the first and third affirmative defenses are surplusage, and the branch of the motion to strike such defenses is denied as moot (*see*, ***Old Williamsburg Candle Corp. v Seneca Ins. Co.***, 66 AD3d 656, 886 NYS2d 480 [2d Dept 2009]; ***Schmidt's Wholesale, Inc. v Miller & Lehman Const., Inc.***, 173 AD2d 1004, 569 NYS2d 836 [3d Dept 1991]).

The branch of the instant motion wherein the plaintiff seeks an order amending the caption by substituting Nicholas Mainella as a party defendant for John Doe #1, Donna Mignone as a party defendant

for John Doe #2 and Nicole Mignone as a party defendant for Jane Doe #3, and excising the fictitious defendants sued herein as John Doe #2-5 and Jane Doe #3-5, is granted pursuant to CPLR 1024. By its submissions, the plaintiff established the basis for this relief (*see*, ***Flagstar Bank v Bellafiore***, 94 AD3d 1044, 943 NYS2d 551 [2d Dept 2012]; ***Neighborhood Hous. Servs. N.Y. City, Inc. v Meltzer***, 67 AD3d 872, *supra*). All future proceedings shall be captioned accordingly.

By its moving papers, the plaintiff further established the default in answering on the part of the newly substituted defendants, Nicholas Mainella, Donna Mignone and Nicole Mignone, as these defendants never interposed answers (*see*, RPAPL § 1321; ***HSBC Bank USA, N.A. v Roldan***, 80 AD3d 566, 914 NYS2d 647 [2d Dept 2011]). Accordingly, the defaults of all such defaulting defendants are fixed and determined. Since the plaintiff has been awarded summary judgment against the defendant mortgagor, and has established the default in answering by Nicholas Mainella, Donna Mignone and Nicole Mignone, the plaintiff is entitled to an order appointing a referee to compute amounts due under the subject note and mortgage (*see*, RPAPL § 1321; ***Ocwen Fed. Bank FSB v Miller***, 18 AD3d 527, 794 NYS2d 650 [2005], *appeal dismissed* 5 NY3d 824, 804 NYS2d 37 [2005]; ***Vt. Fed. Bank v Chase***, 226 AD2d 1034, 641 NYS2d 440 [3d Dept 1996]; ***Bank of E. Asia, Ltd. v Smith***, 201 AD2d 522, 607 NYS2d 431 [2d Dept 1994]).

The branch of the motion seeking leave to reform the Legal Description (Schedule "A") recorded with the mortgage, so that the first paragraph reads, "lot numbers 399 to 407, in Block 4," instead of "lot numbers 399 to 4007, in Block 4", is granted (*see generally*, ***Thayer v Finton***, 108 NY 394 [1888]; ***Loomis v Jackson***, 19 Johns 449 [1822]; ***Meyer v Stout***, 79 AD3d 1666, 914 NYS2d 834 [4th Dept 2010]). By its submissions, the plaintiff demonstrated that the specific reference requested herein should be added, and that no prejudice has been shown to any of the defendants.

Accordingly, this motion by the plaintiff is determined as indicated above. The proposed order appointing a referee to compute pursuant to RPAPL § 1321 has been signed herewith.

The foregoing constitutes the Order of this Court.

Dated: May 3, 2013
Riverhead, NY

HON. HECTOR D. LASALLE, J.S.C.

____ **FINAL DISPOSITION** __X__ **NON-FINAL DISPOSITION**