

STATE OF VERMONT
RUTLAND COUNTY

BANK OF NEW YORK

v.

MICHAEL CONWAY et al.

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Rutland Superior Court
Docket No. 716-12-06 Rdev

CONFORMED COPY
RUTLAND SUPERIOR COURT

DEC - 6 2007

Corrected ENTRY ORDER
Proposed Foreclosure Judgment Decree and Order

The court has reviewed the proposed form of judgment, along with comparable forms for other cases submitted by Plaintiff's attorney. In order to provide information about the basis for returning the proposed form for revisions, a redacted version of a similar form is attached with requested deletions marked, and the deletions and revisions are explained below by page.

Page 1: Late charges will not be allowed for the period *after* the acceleration date. *Late charges* will not be approved in the accounting unless they are shown to be for the period prior to acceleration.

Page 2: The court will not authorize in advance in this order that certain expenses paid by the Plaintiff are Defendant's responsibility. Plaintiff may submit a request for approval of such expenses to be paid from sale proceeds, which will normally be addressed at the confirmation hearing in the event of non-redemption. In the event of a request for a deficiency judgment, such expenses may be determined at a subsequent hearing. 12 V.S.A. § 4532 (g).

Any photocopy of a property description that is inserted into the proposed judgment must be legible and neat and in a reasonable print size.

Page 3: As noted above, costs of sale and foreclosure expenses approved by the court will be addressed at the confirmation hearing or a hearing for a deficiency judgment.

The order should specify that the Defendant is entitled to the Notice of Sale at least sixty days prior to the sale, as the statute provides.

Page 4: The court declines to issue an order that prospectively declares that no forms of notice, other than the one mentioned in the order, are required. This may or may not be the case.

The second item deleted is repetitive of a provision on the prior page.

The third item deleted is another instance of the court declining to limit required forms of notice in the order. This minimizes the risk of a conflict between the order and what might be required by statute.

The court has not found a requirement in the statute that requires the person holding the sale to issue a quitclaim deed, and therefore the court declines to order it to be done.

Page 5: The provision deleted specifies types of post-decree expenses for which a Plaintiff might seek compensation. The court declines to identify such expenses as allowable in advance of hearing, and suggests a substituted phrase that refers to the pertinent rule.

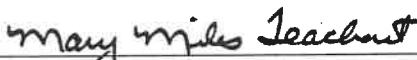
The court declines to authorize the person holding the sale to make a determination about the amount of sale proceeds to be paid to the Plaintiff, including attorneys fees' and expenses not previously included in the judgment decree and order. Any request for compensation for such expenses will be addressed at the confirmation hearing, if any, or at a hearing to determine a deficiency judgment.

Page 6: Again, the amount to be included in any deficiency judgment shall be determined at a hearing. 12 V.S.A. § 4532 (g).

The court declines to issue a declaration about the effect on title of the document. It will be up to future title searchers to make their own determination about whether all requirements have been met for transfer of title.

Plaintiff's attorney may request a hearing to review any of the above issues or proposed alternate provisions.

Dated at Rutland, Vermont this 5th day of December, 2007.



Mary Miles Teachout
Superior Court Judge

SAMPLE

STATE OF VERMONT
COUNTY, SS.

SUPERIOR COURT
DOCKET NO.

Bank,

Plaintiff

v.

And Occupants residing at

Defendants

JUDGMENT ORDER AND DECREE OF FORECLOSURE
AND ORDER FOR PUBLIC SALE

This foreclosure action was brought before the Superior Court by
Complaint of Bank,
, dated April 16, 2007 and served upon the defendants
on 2007. Judgment was subsequently granted to plaintiff. Following accounting by
the Clerk of the Court on the ___ day of ___, 2007 and pursuant to
V.R.C.P. 80.1(g) and V.R.C.P. 58, it is hereby ORDERED, ADJUDGED and DECREED, as
follows:

1. There is presently due and owing the principal amount of _____, with
accrued interest as of _____ of \$ _____, ~~together with late charges due in the~~
amount of \$ _____; Court costs in the amount of \$ _____; recording fees in
the amount of \$ _____; and attorneys' fees in the amount of \$ _____, making the
total amount due plaintiff, as of _____, 2007 \$ _____ plus per
diem interest accruing at the rate of \$ _____ per diem from
_____ to the date of redemption.

2. Defendant shall further be responsible to plaintiff for any sums incurred by plaintiff between the date of this Order and the date of redemption, to the extent that the expenses are ^{approved by the court} ~~necessarily incurred for taxes, insurance, appraisal or other necessary charges~~. A hearing shall be allowed on the matter of charges, if necessary.

3. The property which is the subject of this foreclosure is described as follows:

[property description should be neat, legible, and properly sized]

4. IT IS FURTHER ORDERED: That unless _____ and shall pay to the clerk of the Court on or before the ____ day of _____, 2007 for the benefit of

Bank, _____, the sum of (\$ _____) with interest from the
day of _____, 2007 until the date of redemption at the rate (\$ _____)
per diem, then the said _____ and her heirs, successors and assigns and all persons
claiming by, for or from _____ shall be foreclosed of and from all title, right,
interest and demand of and in the said premises and every part thereof, and the said _____ a
_____ shall be foreclosed and forever barred from all equity of redemption in the said
premises.

5. If the said _____ and the other defendants named herein and provided
with a redemption date shall fail to redeem said premises as set forth above, then the Court
shall issue a Certificate of Non-Redemption and cause the real estate of the defendant,
_____, described in this Judgment Order and Decree of Foreclosure and Order of Public
Sale to be sold as a whole at public sale at _____, Vermont by
a Sheriff, Deputy Sheriff, Constable, Licensed Auctioneer or Disinterested Third Party pursuant
to 12 V.S.A. Section 4531 *et seq.* The plaintiff shall advertise, in a newspaper distributed in
_____ State of Vermont, three (3) consecutive weeks before the time of the sale that the
land and premises be foreclosed by this Decree shall be sold at a public sale to be held at
_____ Vermont on a certain date and time to the highest bidder.

If at sale the plaintiff makes the highest bid, it shall be required to pay cash or certified
funds only to the extent that its bid is in excess of the sum due it by the defendants including all
its costs of the sale and this foreclosure ^{as approved by the court} up to the date of sale. *

The plaintiff shall also send a copy of the Notice of Sale pursuant to Title 12 Section
4532 (f) V.S.A. to ~~the defendant/mortgagor~~ ^{at least 60 days before the sale.} Said notice shall be sent not later
_____ *

than the first publication date of said Notice of Sale. ~~No other notice, including notice as set forth in 4532 (a)-(e) shall be sent to mortgagors.~~ (X)

The purchaser at the sale shall pay cash or certified funds, or produce a commitment letter from a bank or mortgage company or other lender licensed to do business in the State of Vermont, at the time of sale and the Notice of Sale shall so state this requirement. In any case a \$10,000.00 cash deposit at sale shall be required. ~~If at the sale the plaintiff makes the highest bid, it shall be required to pay cash or certified funds only to the extent that its bid is in excess of the sum due it by the defendant/mortgagor, at the time of the sale, as more particularly set forth hereinabove.~~ (X)

~~No other notice of said sale or intent to foreclose shall be given to mortgagors or any other party by the person holding the public sale, except,~~ For good cause, the person holding the public sale may postpone the sale for a time not exceeding ten (10) days, or sooner, from time to time until it is completed, giving notice of such adjournment by public proclamation at the time and place appointed for said sale. (X)

The person holding the public sale shall obtain from the Clerk of this Court a certified copy of this decree together with a Certificate of Non-Redemption and shall have the same recorded in the Land Records of the Town of Worcester, Vermont.

The person holding the public sale shall sell to the highest bidder all of the land and premises described hereinabove, also subject to the town Worcester real estate taxes and assessments, if any, ~~and the person holding the public sale shall make, execute and acknowledge, and deliver a Quit Claim Deed thereof to the purchaser of the land and premises.~~ (X)

The plaintiff ~~shall~~^{may} be allowed reasonable attorney's fees

for all work, reasonable and necessary to complete the foregoing public sale and shall be

(deletion + addition)

allowed reasonable expenses pursuant to VRCP 80.1(j).

~~Subject to the procedures for disbursement set forth in V.R.C.P. Rule 80.1(j) and subject to a final confirmation order of this Court, as provided in V.R.C.P. Rule 80.1(k), from the proceeds of the public sale, the person holding the sale shall first reimburse the Plaintiff the expenses and attorney's fees incurred in complying with this Judgment and Decree of Foreclosure and Order of Public Sale; ("Expenses" shall include, but not be limited to, the actual costs of advertising the sale, the recording the Report of Sale, mailing a notice to the plaintiff, mileage and fees connected with the sale and also the costs of procuring a certified copy of this Order and Certificate of Non-Redemption or Certificate of Redemption and the Final Confirmation Order and the costs of recording same in the land records of the town Worcester as well as any other actual expense of the person holding the public sale which may be connected with the notice, advertising, sale, return and recording thereof and securing and delivering the deed of transfer); the person holding the sale shall then pay the plaintiff the amount due the defendant as set forth hereinabove.~~

In the event that the proceeds of the sale, ~~after the first deducting all the costs, expenses and attorney's fees as set forth herein,~~ shall exceed the amount due the plaintiff, ~~as set forth hereinabove,~~ the surplus shall be retained by the person holding the sale as a custodian and then disbursed in accordance with the Final Confirmation Order of this Court.

[In the event that the proceeds of this sale are insufficient to meet the expenses and attorney's fees incurred in making the sale and the amount due the plaintiff ~~as set forth~~

only if requested in complaint

hereinabove, the plaintiff ^{may} shall be entitled to a Judgment Order for a deficiency against the defendant/mortgagor,] *The amount shall be determined after the Order of Confirmation of sale.* in an amount equal to the difference between the amount due the plaintiff as set forth hereinabove, together with all costs and expenses of the sale, and the proceeds of the sale. If the plaintiff is the purchaser at the sale, any deficiency judgment shall be limited to the difference between the fair market value of the premises and the amount due the plaintiff as:

The person holding the public sale shall, within ten (10) days after the sale, file with this Court a Report of Sale, under oath, of the sale and of his doings. If this Court approves the Report of Sale after a hearing on whether to confirm or set aside the sale, it shall issue an Order of Confirmation *approving the allocation and distribution of sale proceeds.* ~~The recording in the land records of a certified copy of this Judgment and Decree of Foreclosure and Order of Public Sale, a Certificate of Non-Redemption, the Quit Claim Deed under Order of Sale and a certified copy of the Order of Confirmation, shall transfer title to the purchaser at the sale. After an Order of Confirmation has been issued by this Court, the purchaser at the sale, upon request of the Clerk, shall be entitled to a Writ of Possession to said land and premises.~~

If you wish to appeal this judgment, you must request permission to appeal by motion filed with the Court within ten days of the date of entry of the judgment not including that date or Saturdays, Sundays or legal holidays.

DATED at Montpelier, Vermont this 14th day of July, 2007.

Hon. Miles Teachout
Presiding Judge
Superior Court