

At an IAS Term, Part FSMP, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 2nd day of April 2024.

PRESENT:

HON. Lawrence Knipel
J.S.C.

Index No.: 19391/09

_____ X

US ROF,

Plaintiff,

DECISION AND ORDER

-against-

CHARMAINE BECKFORD SMITH et al,

Defendant,

_____ X

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion:

Papers	Numbered
Motion (MS 11)	<u>1</u>
Opp/Cross (MS 12)	<u>2</u>
Reply/Opp to Cross	<u>3</u>

Upon the foregoing cited papers, the Decision/Order on this Motion is as follows:

Plaintiff moves for an extension of time to hold a foreclosure sale. Defendant opposes and cross-moves for dismissal based upon RPAPL 1351 or for the referee to recalculate the amount due in light of the passage of time since the entry of judgment. Plaintiff opposes.

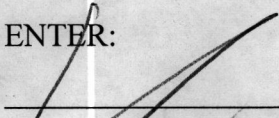
RPAPL 1351[1], in relevant part, states: “*The judgment shall direct that the mortgaged premises... be sold by or under the direction of the ... referee within ninety days of the date of the judgment*” [emphasis added]. Put differently, the statute requires that the JFS direct that the sale be held within ninety days – rather than mandating that the sale must always be held during that time period. Pursuant to CPLR 2004: “the court may extend the time fixed by any statute, rule or order for doing any act, upon such terms as may be just and upon good cause shown.” As

such, movant's RPAPL 1351 arguments are unavailing – the Court can (see, *BNY v Ramsamooj*, 219 AD3d 1402, 1403 [2d Dept 2023]) and will extend the time to hold the sale where, as here, it is warranted.¹

Defendant offers no basis to require the referee to recalculate. The judgment of foreclosure and sale is in rem against the property and does not expire. Plaintiff is correct that the Appellate Division has consistently allowed plaintiffs to go to sale on un-updated foreclosure judgments and that to reward a defendant for delay she caused would be inequitable.

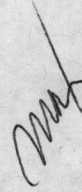
Motion to extend granted (see accompanying order). Cross-motion denied.

This constitutes the decision and order of the Court.

ENTER:


Hon. Lawrence JSC
Knipel

**HON. LAWRENCE KNIPEL
ADMINISTRATIVE JUDGE**


2024 AUG - 6 AM 10:16
KINGS COUNTY CLERK
FILED

¹ The prior scheduled auctions were each cancelled upon Defendant's filing a bankruptcy petition on the eve of sale.