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**SHORT FORM ORDER**  
**SUPREME COURT - STATE OF NEW YORK**

*Present:*

**HON. RALPH P. FRANCO,**  
*Justice*

TRIAL/IAS, PART 13

**FLEET BANK**

Plaintiff(s),

NASSAU COUNTY

-against-

INDEX No.: 000233/97  
MOTION SEQ. NO: 2

**ROGER CLARK**

Defendant(s).

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The following papers read on this motion:

- Notice of Motion/ Order to Show Cause..... 1 - 3
- Answering Affidavits.....
- Replying Affidavits.....

Motion by Plaintiff for an Order pursuant to RPAP Sec. 221 directing the Sheriff to put Plaintiff's assignee into possession of the premises known as **135 West Columbia Street, Hempstead, New**

York, is **denied** as to a corporation known as **Claton Office Systems Group, Inc.**, and **granted** as to the Defendants named in the caption.

On April 5, 2000, a Judgment of Foreclosure and Sale was entered in the Nassau County Clerk's office. Said judgment, among other things, included the usual provisions for foreclosure and the barring of all Defendants' and persons claiming under them, from all right, claim, lien, title, interest and equity of redemption in said Premises, and further expressly provided that the purchaser of the Premises be let into possession upon presentation of the Referee's Deed. At the foreclosure auction held pursuant to the Judgment of Foreclosure and Sale, the Premises were sold by the Referee to the Plaintiff as the highest and only bidder. By Referee's Deed dated July 31, 2000, title was transferred to R. E. Waterman Properties, Inc., the assignee and a wholly-owned subsidiary of the Plaintiff. It is undisputed that the Premises involved in this action consists of a commercial property located in Hempstead, New York, occupied by

Defendants' Roger Clark, a/k/a Roger F. Clark, Kathleen Clark, a/k/a Kathleen M. Clark, Claton, Inc., Xeroservice, Inc., and Copy Services, Inc., who remain in possession. The aforementioned Defendants' were duly served with a certified copy of the Judgment of Foreclosure and Sale and the Referee's Deed as part of a Notice to Vacate. Defendants' Roger Clark, a/k/a Robert F. Clark and Kathleen Clark, a/k/a Kathleen M. Clark, Claton, Inc., Xeroservice, Inc., and Copy Services, Inc., refuse to surrender possession of said Premises. In opposing Plaintiff's motion, the sole opposition has been filed by Defendant, Roger Clark, who asserts that one of the Defendants' occupying the Premises is **Claton Office Systems Group, Inc.**, not Claton Inc., as named in the caption. The opposition asserts that because **Claton Office Systems Group, Inc.**, has not been named a party in the action, it is not subject to the foreclosure judgment. The opposition only asserts a defense for one of the five Defendants' who remain in the Premises. Thus, Plaintiff's motion, relative to

Defendants', Roger Clark, a/k/a Roger F. Clark and Kathleen Clark, a/k/a Kathleen M. Clark, Xeroservice, Inc., and Copy Services Inc., is unopposed and granted.

In **Nationwide Associates, Inc. v. Brunne**, 216 A.D.2d 547 (2<sup>nd</sup> Dept. 1995), at Page547, the Court held that

“Due process requires that one be given notice and an opportunity to be heard before one’s interest in property may be adversely affected by judicial process. Enforcement of the Writ of Assistance against one who was not joined as a party to the proceeding would violate due process. (Citations omitted). Further, it is well settled that “[t]he interest of an occupant of the mortgaged premises who is not served remains unaffected by the foreclosure”. (Citations omitted).

Attorney for Movant suggests that Defendants’ may be playing a “shell game” by constantly changing tenants so that a foreclosing Plaintiff could never keep up “with each subterfugical change of tenancy orchestrated by a wily Defendant.”

The Court notes that Roger Clark has not submitted proof that **Claton Office Systems Group, Inc.**, is a corporation duly authorized

to conduct business in New York State. Nor has there been compliance with 22 NYCRR 130-1.1 by Defendant's attorney.

Nevertheless, Movant's remedy as to Claton Systems Group, Inc., is to institute a summary proceeding in the District Court of Nassau County.

**Dated: March 15, 2001**



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**Hon. Ralph P. Franco, J.S.C.**

**ENTERED**

MAR 16 2001

NASSAU COUNTY  
COUNTY CLERK'S OFFICE