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# MEMORANDUM

## SUPREME COURT - STATE OF NEW YORK

*By: Justice Thomas P. Phelan*

IAS PART 10

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IDEAL MORTGAGE BANKERS, LTD.  
c/o Option One Mortgage Corporation  
3 Ada  
Irvine, CA 92618

NASSAU COUNTY

INDEX NO. 492/05  
XXX

Plaintiff,

- against -

ORIGINAL MOTION DATE: 03/09/05  
SUBMISSION DATE: 03/09/05  
MOTION SEQUENCE #1

PETER POCOCNIK,

JOHN DOE (Said name being fictitious, it being the intention of plaintiff to designate any and all occupants of premises being foreclosed),

Defendants.

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Motion by plaintiff for an order amending the caption of this action to delete the address of plaintiff; substituting Jill Potocnik as a party defendant in place of John Doe; amending the caption of this action to reflect the substitution; awarding plaintiff summary judgment against defendant Peter Potocnik and appointing a referee is granted in accordance herewith.

The only substantive opposition to this motion is by defendant Peter Potocnik who challenges plaintiff's calculation of arrears, plaintiff's refusal to accept his September, 2004 payment, and identification of the co-defendant as Jill Potocnik.

Plaintiff has demonstrated its entitlement to judgment in this foreclosure action. Given the dispute over the correct name of the co-defendant -- defendant Peter Potocnik's wife with whom he resides in the subject premises -- substitution and amendment shall identify said co-defendant as "Jill" Potocnik (the first name being fictitious, it being the intention of plaintiff to designate the spouse of defendant Peter Potocnik, as occupants of the premises being foreclosed upon).

**RE: IDEAL v. POTOCHNIK**

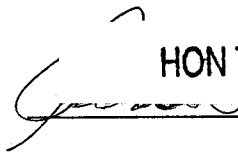
**Page 2.**

Any challenge to plaintiff's calculation of arrears is premature. It is the province of the referee to, inter alia, calculate the amount due plaintiff (see RPAPL §1321(a)), subject to confirmation by the court.

In all other respects, plaintiff's motion is granted without opposition.

Settle order on notice.

3-15-05  
Date

  
HON THOMAS P. PHELAN

J.S.C.  
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