

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. JOSEPH COVELLO

Justice

**FIRST UNION NATIONAL BANK, CUSTODIAN FOR
BREEN CAPITAL INVESTMENT CORP.,**

Plaintiff,

-against-

**TRIAL/IAS, PART 24
NASSAU COUNTY**

Index #: 017491/01

**Motion Seq. #: 001
Motion Date: 08/23/04**

**FLORENCE B. ALLEN and J.J. FRANKLIN HOLMES,
HOLMES, if dead, their respective heirs-at-law,
next of kin, distributees, executors, administrators, trustees,
devisees, legatees, assignees, lienors, creditors and successors
in interest and generally all persons having or claiming under
by, or through FLORENCE B. ALLEN and J.J. FRANKLIN
HOLMES, if they be dead, whether by purchase, inheritance,
lien or otherwise, including any right title or interest in and to
the real property described in the complaint herein, all who
and whose names and places of residence are unknown to the
plaintiff; EMPIRE MORTGAGE LLC; PROPERTY TAX
REDUCTION INC; FIRST USA BANK; NATIONAL
WESTMINSTER BANK USA; FIRST DEPOSIT NATIONAL
BANK; CTC INVESTMENTS INC.; CHESTER
SMYKOWSKI; LYNN SANT ANGELO; MRS. SURAN;
JOSEPH HOLMES;**

Defendants.

The following paper read on this motion:

Notice of Motion 1

Upon the foregoing papers, the unopposed motion by Atlantis Asset Recovery LLC on behalf of Frederick D. Holmes Jr., for an Order confirming the Referee's Report of Sale and upon confirmation directing the Commissioner of Finance to disburse all of the surplus monies, plus accrued interest currently on deposit with the Commissioner of Finance to the named claimants Frederick D. Holmes Jr., Joseph Holmes, Thaddeus Holmes and Jacob Holmes, is denied with leave to renew on proper papers.

This action was commenced to foreclose a mortgage upon real property located in the County of Nassau, the subject premises being identified as 509 Clocks Boulevard, Massapequa, New York.. Judgment of Foreclosure and Sale was entered on November 20, 2002, and Michael P. Vessa, Esq., was appointed as referee to conduct the foreclosure sale of the mortgaged premises. The subject premises were sold pursuant to the Judgment, by the Referee on July 28, 2003 and the sale was closed thereafter.

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The Referee's report of Sale dated October 31, 2003, sets forth that after the amounts directed in the Judgment of Foreclosure and Sale were paid out of the proceeds of the sale there remains a surplus in the amount of \$99,399.28.

Movant asserts that in 1997 when defendant, Florence B. Allen passed away the subject premises passed to her husband, defendant J.J. Franklin Holmes. On January 1, 2004, Mr. J.J. Franklin Holmes died intestate, and is survived by his brothers, Joseph Holmes, Thaddeus Holmes and Jacob Holmes and his nephew, Frederick D. Holmes Jr.

Movant asserts that a Notice of Claim to the surplus monies was filed on behalf of the claimants, Frederick D. Holmes Jr., Joseph Holmes, Thaddeus Holmes and Jacob Holmes, who are the heirs to the owner of the equity of redemption and who are entitled to the surplus monies.

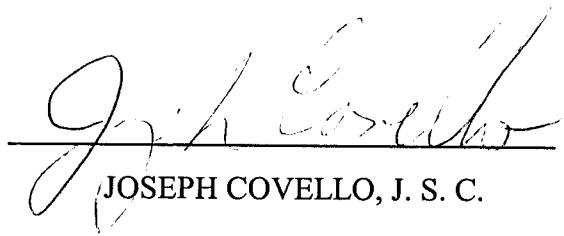
The application must be denied as it is only being made in connection with the Limited Power of Attorney which only Frederick D. Holmes Jr., one of the claimants signed but is not notarized. No Power of Attorney, or any other documentation by the other three claimants regarding their knowledge or consent that the surplus monies be paid over to movant on their behalf.

Therefore, it is hereby

ORDERED, that the motion, is denied with leave to renew upon proper papers.

This constitutes the decision and Order of the Court.

Dated: September 22, 2004



JOSEPH COVELLO, J. S. C.

ENTERED

SEP 28 2004

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**