

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CA 24-00216

PRESENT: LINDLEY, J.P., BANNISTER, OGDEN, GREENWOOD, AND HANNAH, JJ.

DEUTSCHE BANK TRUST COMPANY AMERICAS, AS
TRUSTEE FOR THE REGISTERED HOLDERS OF WELLS
FARGO COMMERCIAL MORTGAGE SECURITIES, INC.,
COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES,
SERIES 2011-C4, ACTING BY AND THROUGH RIALTO
CAPITAL ADVISORS, LLC, AS SPECIAL SERVICER
UNDER THE POOLING AND SERVICING AGREEMENT
DATED AS OF AUGUST 1, 2011, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

FREDONIA TEMPLE/BRIGHAM APARTMENTS LLC,
BRETT J. FITZPATRICK, DAVID A. HUCK, LORETTA
FITZPATRICK, AS EXECUTRIX OF THE ESTATE OF
J. MICHAEL FITZPATRICK, DECEASED, GERALD E.
KELLY, DEFENDANTS-RESPONDENTS,
ET AL., DEFENDANT.
(APPEAL NO. 3.)

PHILLIPS LYTTLE LLP, BUFFALO (PRESTON L. ZARLOCK OF COUNSEL), AND
HOLLAND & KNIGHT LLP, NEW YORK CITY, FOR PLAINTIFF-APPELLANT.

KAVINOKY COOK LLP, BUFFALO (SCOTT C. BECKER OF COUNSEL), FOR
DEFENDANT-RESPONDENT FREDONIA TEMPLE/BRIGHAM APARTMENTS LLC.

DUKE, HOLZMAN, PHOTIADIS & GRESENS LLP, BUFFALO (MATTHEW J. BECK OF
COUNSEL), FOR DEFENDANT-RESPONDENT BRETT J. FITZPATRICK.

WOODS OVIATT GILMAN LLP, BUFFALO (BRIAN D. GWITT OF COUNSEL), FOR
DEFENDANT-RESPONDENT DAVID A. HUCK.

BENGART & DEMARCO, LLP, TONAWANDA, LAW OFFICE OF PHILIP MILCH, AMHERST
(PHILIP A. MILCH OF COUNSEL), FOR DEFENDANT-RESPONDENT LORETTA
FITZPATRICK, AS EXECUTRIX OF THE ESTATE OF J. MICHAEL FITZPATRICK,
DECEASED.

Appeal from a supplemental order of the Supreme Court, Chautauqua
County (Emilio Colaiacovo, J.), entered January 22, 2024. The
supplemental order expanded the powers and authority of the receiver
to market and sell the property.

It is hereby ORDERED that the supplemental order so appealed from
is unanimously modified on the law by vacating the first ordering
paragraph and substituting therefor an ordering paragraph authorizing

the receiver to sell the real property at public auction to the highest bidder and as modified the order is affirmed without costs.

Same memorandum as in *Deutsche Bank Trust Co. Ams. v Fredonia Temple/Brigham Apts. LLC* ([appeal No. 1] – AD3d – [Nov. 15, 2024] [4th Dept 2024]).