

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

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CA 17-01132

PRESENT: WHALEN, P.J., SMITH, CENTRA, NEMOYER, AND CURRAN, JJ.

PATRICK LORETO, IN THE RIGHT OF AND ON BEHALF
OF ENCORE PROPERTIES OF ROCHESTER, LLC, AND
RICCARDO DURSI, IN THE RIGHT OF AND ON BEHALF
OF ENCORE PROPERTIES OF ROCHESTER, LLC,
PLAINTIFFS-APPELLANTS-RESPONDENTS,

V

ORDER

WELLS FARGO BANK, N.A., AS TRUSTEE FOR THE
REGISTERED HOLDERS OF CREDIT SUISSE FIRST BOSTON
MORTGAGE SECURITIES CORP., COMMERCIAL MORTGAGE
PASS-THROUGH CERTIFICATES, SERIES 2007-C5,
TIMOTHY FOSTER, AS RECEIVER, DEFENDANTS-RESPONDENTS,
KENNETH P. RAY, JR., EXECUTOR OF THE ESTATE OF
KENNETH P. RAY, DECEASED,
DEFENDANT-RESPONDENT-APPELLANT,
ET AL., DEFENDANTS.
(APPEAL NO. 1.)

JOSEPH A. TADDEO, JR., ROCHESTER, FOR PLAINTIFF-APPELLANT-RESPONDENT
PATRICK LORETO, IN THE RIGHT OF AND ON BEHALF OF ENCORE PROPERTIES OF
ROCHESTER, LLC.

FELT EVANS, LLP, CLINTON (JAY G. WILLIAMS, III, OF COUNSEL), FOR
DEFENDANT-RESPONDENT-APPELLANT.

BOND, SCHOENECK & KING, PLLC, ROCHESTER (GREGORY J. MCDONALD OF
COUNSEL), FOR DEFENDANT-RESPONDENT TIMOTHY FOSTER, AS RECEIVER.

RIKER DANZIG SCHERER HYLAND & PERRETTI LLP, MORRISTOWN, NEW JERSEY
(MICHAEL R. O'DONNELL OF COUNSEL), FOR DEFENDANT-RESPONDENT WELLS
FARGO BANK, N.A., AS TRUSTEE FOR THE REGISTERED HOLDERS OF CREDIT
SUISSE FIRST BOSTON MORTGAGE SECURITIES CORP., COMMERCIAL MORTGAGE
PASS-THROUGH CERTIFICATES, SERIES 2007-C5.

Appeal and cross appeal from an order of the Supreme Court,
Monroe County (Matthew A. Rosenbaum, J.), entered December 5, 2016.
The order, among other things, granted the motion of defendant Wells
Fargo Bank, N.A., as Trustee for the Registered Holders of Credit
Suisse First Boston Mortgage Securities Corp., Commercial Mortgage
Pass-Through Certificates, Series 2007-C5 seeking an order
establishing the amount by which it is to be equitably subrogated and
allowing the sale of certain property.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs for reasons stated in the decision at Supreme Court.

Entered: November 9, 2018

Mark W. Bennett
Clerk of the Court