

IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL
CIRCUIT OF FLORIDA IN AND FOR BAY COUNTY

HANCOCK BANK, a Mississippi banking
corporation, as assignee of the Federal Deposit
Insurance Corporation, as Receiver for Peoples
First Community Bank, a Florida banking
corporation,

Plaintiff,

v.

CASE NO.: 2013CA1341

ROBERT P. LUCAS, MARY MARTIN LUCAS,
THE BANK OF NEW YORK MELLON TRUST
COMPANY N.A. f/k/a The Bank of New York
Trust Company, N.A. Successor Trustee to JP
Morgan Chase Bank, N.A. as Trustee for the
Master Adjustable Rate Mortgages Trust 2005-8,
as assignee of MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC., solely as
nominee for Countrywide Home Loans, Inc.,
COUNTRYWIDE HOME LOANS, INC., BAY
POINT IMPROVEMENT ASSOCIATION, INC.,
and BAY POINT PROPERTY OWNERS
ASSOCIATION, INC., et al.

Defendants.

FINAL SUMMARY JUDGMENT OF FORECLOSURE AND
IMPOSITION OF EQUITABLE LIEN

THIS CAUSE having come before the Court upon Plaintiff's Motion for Summary Judgment, and Defendant, THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. f/k/a The Bank of New York Trust company, N.A., Successor Trustee to JP Morgan Chase Bank, N.A., as Trustee for the Master Adjustable Rate Mortgages Trust 2005-8, as assignee of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., solely as nominee for Countrywide Home Loans, Inc.'s ("BONY" or "Defendant") Cross-Motion for Summary Judgment as to Counts I and II of BONY's Counterclaim, and the Court having reviewed the Official File, and noting the sworn affidavits from Plaintiff and Defendant, the evidence of proper service upon Defendants, and the contents of the Official File reflecting that Plaintiff and BONY are entitled to the requested relief as noted below with respect to priority of liens and as foreclosing the interests of Defendants, ROBERT P. LUCAS and MARY MARTIN LUCAS ("Borrower"),

COUNTRYWIDE HOME LOANS, INC. (“Countrywide”), BAY POINT IMPROVEMENT ASSOCIATION, INC. (“BPA”), and BAY POINT PROPERTY OWNERS ASSOCIATION, INC. (“BPPOA”), in addition to having heard the argument of counsel at a hearing held in Chambers on May 25, 2016, and accordingly finding that the Plaintiff is entitled to its requested relief of entry of a final summary judgment of foreclosure subject to BONY’s first priority Equitable Lien, it is therefore,

ORDERED AND ADJUDGED as follows:

1. Due and legal service of process has been made on all Defendants. Defendants Countrywide, BPA, and BPPOA, have either answered or been defaulted and as such, there is no issue of fact that precludes entry of judgment in favor of Hancock Bank.

2. All conditions precedent to acceleration of the debt evidenced by the Promissory Note and Mortgage and filing suit were met by Plaintiff. *See, Seligman v. Bisz*, 167 So. 38 (Fla. 1936).

3. Plaintiff is entitled to an award of reasonable attorney’s fees against Borrower in the total amount of \$13,817.00 based on a rate of \$260.00/hour or under for 59.8 attorney hours. In awarding same, the Court has considered all of the criteria set forth in *Florida Patients’ Compensation Fund v. Rowe*, 472 So. 2d 1145 (Fla. 1985).

4. Subject to the BONY’s first priority Equitable Lien detailed below, Plaintiff is due the following amounts from the Borrower according to the Note and Mortgage:

Principal	\$99,476.70
Interest at the Note Rate	\$1,832.87
Default Interest through the date of this Judgment (with a per diem of \$48.78 each day thereafter at interest rate of 17.5%)	\$59,218.92
Appraisal Fees	\$750.00

Attorney’s Fees

McCalla Raymer, LLC	\$11,288.00
Denise Hallmon Rowan & Associates, P.A.	\$2,529.00

Court Costs (itemize each here):

Title Search Expense	\$125.00
Clerk’s Filing Fee	\$905.00
Additional Filing Fee	\$12.50
Statutory Convenience Fee	\$29.93
Summons	\$80.00

Recording Lis Pendens	\$5.00
Service of Process Fee	\$386.00
Transcript	\$332.90
Certified Mail	\$18.33
Publication Costs (Notice of Sale) (Estimated)	\$350.00

Making a **total sum** of **\$177,340.15**, that shall bear interest at the rate of 4.75% per year, or as otherwise prescribed by law, whichever is less ("Hancock Judgement").

5. BONY's Motion for Summary Judgment on Counts I and II of its Counterclaim is hereby GRANTED. As such, BONY is granted a first priority equitable lien on the Property described in detail below. BONY is entitled to the imposition of an equitable lien to the extent of the funds paid by BONY to satisfy the Bank Atlantic Mortgage (as identified in pleadings on file in the Court File) in the amount of \$150,737.17 plus applicable interest from the date of default, February 1, 2013 through the present (9/8/2016) at the statutory rate of 4.75% is \$25,708.43 (the "BONY Equitable Lien"). The total amount of the BONY Equitable Lien is \$176,445.60. The BONY Equitable Lien is superior in right, title and interest of all Defendants and Plaintiff/Counter-Defendant, Hancock Bank.

6. BONY holds a first priority Equitable Lien for the total sum of \$176,445.60 that is superior to all claims or estates of all Defendants and Plaintiff, and Plaintiff holds a second priority position for the Hancock Judgment that is superior to all claims or estates of Defendants on the following described property in Bay County, Florida:

Lot 547, BAY POINT UNIT ONE, according to the Plat thereof, as recorded in Plat Book 11, Pages 47 through 56, in the office of the Clerk of the Circuit Court of Bay County, Florida.

Commonly known as 374 Wahoo Road, Panama City Beach, Florida 32408 (the "Property").

7. If the total sum of the BONY Judgment and Hancock Judgment with interest at the rate prescribed by law and all costs of this action accruing subsequent to this judgment are not paid, the Clerk of this Court shall sell the Property at a public sale to the highest bidder for cash, except as set forth hereinafter, on Jan. 3, 2017, at 11:00 am Central Time at www.bay.realforeclose.com in accordance with Chapter 45, Florida Statutes.

8. The Plaintiff shall advance all subsequent costs of this action and shall be reimbursed for them by the Clerk if the Plaintiff is not the purchaser of the real property at the sale, provided, however, that the purchaser of the Property at the sale shall be responsible for the documentary stamps payable on the Certificate of Title.

9. BONY shall be allowed to credit bid in the amount of the BONY Equitable Lien. If Plaintiff elects to bid its initial bid must be in cash for an amount not less than the amount of the BONY Equitable Lien plus \$100. If there is further bidding after Plaintiff's initial bid, Plaintiff may credit bid all or part of the Hancock Judgment, which will be added to its cash bid. Any bidder other than BONY and Plaintiff must bid in cash pursuant to Chapter 45, Florida Statutes. Any sums expended by Plaintiff for Ad Valorem Taxes, Hazard Insurance or property preservation shall be credited to Plaintiff's bid. If Plaintiff is to include such sums in its bid, Plaintiff shall file an affidavit setting forth such expenditures.

10. On filing the Certificate of Title, the Clerk shall distribute the proceeds of the sale, so far as they are sufficient, by paying: **first**, BONY up to the BONY Equitable Lien; **second**, documentary stamps affixed to the Certificate; **third**, all of the Plaintiff's costs; **fourth**, the Plaintiff's attorney's fees; **fifth**, the total sum due the Plaintiff, less the items paid, plus interest at the rate prescribed by law from this date to the date of the sale; and **sixth**, by retaining any amount remaining pending the further Order of this Court.

11. Upon payment of the Equitable Lien from the sales proceeds, BONY shall file a Satisfaction of its Equitable Lien as granted and imposed by this Judgment.

12. On filing the Certificate of Sale, Defendants and all persons claiming under or against them since the filing of the Notice of *Lis Pendens* shall forever be barred and foreclosed of any and all estate or claim in the Property, except as to claims or rights under Chapter 718 or Chapter 720, Florida Statutes, if any. Upon filing the Certificate of Title, the person named in the Certificate of Title shall without delay be let into possession of the property. If any person remains in possession of the Property, the Clerk shall, upon order of the Court, issue forthwith a Writ of Possession for the premises located on the Property and the Sheriff is hereby authorized to serve the Writ of Possession forthwith after issuance of Certificate of Title upon request of the person named in the Certificate of Title.

13. Jurisdiction of this action is retained to enter further Orders as are proper including, without limitation, Writs of Possession and Deficiency Judgment.

14. That if BONY or Plaintiff should elect to assign its bid at sale, the assignment of bid shall be effective upon the filing of a Notice of Assignment of Bid or Motion and Order for Assignment of Bid and the Clerk of the above entitled Court is hereby directed to issue the Certificate of Title to such officer without further payment by such officer.

15. In accordance with HB65, Chapter 2006-175, Laws of Florida:

IF THIS PROPERTY IS SOLD AT PUBLIC AUCTION, THERE MAY BE ADDITIONAL MONEY FROM THE SALE AFTER PAYMENT OF PERSONS WHO ARE ENTITLED TO BE PAID FROM THE SALE PROCEEDS PURSUANT TO THIS FINAL JUDGMENT.

IF YOU ARE A SUBORDINATE LIENHOLDER CLAIMING A RIGHT TO FUNDS REMAINING AFTER THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN SIXTY (60) DAYS AFTER THE SALE. IF YOU FAIL TO FILE A CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS.

IF YOU ARE THE PROPERTY OWNER, YOU MAY CLAIM THESE FUNDS YOURSELF. YOU ARE NOT REQUIRED TO HAVE A LAWYER OR ANY OTHER REPRESENTATION AND YOU DO NOT HAVE TO ASSIGN YOUR RIGHTS TO ANYONE ELSE IN ORDER FOR YOU TO CLAIM ANY MONEY TO WHICH YOU ARE ENTITLED. PLEASE CHECK WITH THE BAY COUNTY CLERK OF THE COURT AT THE BAY COUNTY COURTHOUSE, AT 300 EAST 4TH STREET, PANAMA CITY, FLORIDA 32401, (850) 747-5116 WITHIN TEN (10) DAYS AFTER THE SALE TO SEE IF THERE IS ADDITIONAL MONEY FROM THE FORECLOSURE SALE THAT THE CLERK HAS IN THE REGISTRY OF THE COURT.

IF YOU DECIDE TO SELL YOUR HOME OR HIRE SOMEONE TO HELP YOU CLAIM THE ADDITIONAL MONEY, YOU SHOULD READ VERY CAREFULLY ALL PAPERS YOU ARE REQUIRED TO SIGN, ASK SOMEONE ELSE, PREFERABLY AN ATTORNEY WHO IS NOT RELATED TO THE PERSON OFFERED TO HELP YOU. TO MAKE SURE THAT YOU UNDERSTAND WHAT YOU ARE SIGNING AND THAT YOU ARE NOT TRANSFERRING YOUR PROPERTY OR THE EQUITY IN YOUR PROPERTY WITHOUT THE PROPER INFORMATION. IF YOU CANNOT AFFORD TO PAY AN ATTORNEY, YOU MAY CONTACT ONE OF THE FOLLOWING AGENCIES TO SEE IF YOU QUALIFY FINANCIALLY FOR THEIR SERVICES:


LEGAL SERVICES OF NORTH FLORIDA, INC. – PANAMA CITY OFFICE
211 East 11th Street
Panama City, Florida 32401
(850) 769-3581
WEB SITE: WWW.LSNF.ORG

IF THEY CANNOT ASSIST YOU, THEY MAY BE ABLE TO REFER YOU TO A LOCAL

BAR REFERRAL AGENCY OR SUGGEST OTHER OPTIONS. IF YOU CHOOSE TO CONTACT EITHER OF THE AGENCIES, FOR ASSISTANCE, YOU SHOULD DO SO AS SOON AS POSSIBLE AFTER RECEIPT OF THIS NOTICE.

16. The Clerk of the Court is directed to record this Final Judgment in the Official Records of Bay County, but the validity of the BONY Equitable Lien granted herein shall not be dependent on such act of recording.

DONE AND ORDERED in Chambers in Bay County, Florida, this 24 day of oct, 2016.



Hon. Hentz McClellan
Circuit Judge

cc:

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