

Filing # 125663588 E-Filed 04/27/2021 11:17:05 AM

**IN THE CIRCUIT COURT OF THE 14TH JUDICIAL
CIRCUIT IN AND FOR BAY COUNTY,
FLORIDA**

FIRST MORTGAGE AND LENDING,
LLC,
a Florida limited liability company,
as successor in interest to THE
FIRST,
a National Banking Association,
successor in interest to FIRST
FLORIDA BANK,

CASE NO.: 19-004288-CA

Plaintiff,
vs

SHINUI BUILDER LLC, et al.

Defendant(s).
_____ /

**AGREED FINAL JUDGMENT OF FORECLOSURE AND
REFORMATION OF MODIFICATION AGREEMENT-MORTGAGE
RECORDED IN
O.R. BOOK 4078, PAGE 1784 IN THE PUBLIC RECORDS OF BAY
COUNTY, FLORIDA AND THE ASSIGNMENT OF THAT MORTGAGE
RECORDED IN O.R. BOOK 4289, PAGE 436 IN THE PUBLIC RECORDS
OF BAY COUNTY, FLORIDA AND ON ENFORCEMENT OF LOST NOTE**

THIS CAUSE came before the Court upon agreement of the parties and after a hearing on March 23, 2021, FIRST MORTGAGE AND LENDING, LLC, a Florida Limited Liability Company, a successor in interest to the First, a National Banking Association, successor in interest to First Florida Bank. Having reviewed the instant Motion and the supporting affidavits and the court file, having heard argument of counsel, and being otherwise fully advised in the premises, it is:

ORDERED AND ADJUDGED that:

1. The Court has jurisdiction of the subject matter and the parties of this cause.
2. There are no genuine issues of material fact as to Plaintiff's Amended Complaint.

Plaintiff's Agreed Final Judgment is granted as follows:

A. Count 1 (Reformation of Modification Agreement-Mortgage) is GRANTED, the Mortgage that is recorded in O.R. Book 4078, Page 1784 in the Public Records of Bay County, Florida

is hereby reformed so that it accurately reflects and shows that the legal description recited in the Mortgage states as follows:

Lot 114, LAKE MERIAL, PHASE ONE, a subdivision according to the Plat thereof recorded at Plat Book 22, Page 4, in the Public Records of Bay County, Florida.

B. Plaintiff filed a Motion to Amend Pleadings to Conform with Evidence, to enforce the lost, destroyed or stolen instrument on April 12, 2021. An Agreed Order on the Motion to Amend Pleadings to Conform with Lost Note was submitted to this Court and entered on April 23, 2021. Plaintiff is not presently in possession of the original Note that is the subject of these foreclosure proceedings. However, such Note was previously filed with the clerk on April 16, 2020 but subsequently returned on or about July, 2020. Counsel for Plaintiff is unable to locate the original note. Nevertheless, Plaintiff is entitled to enforce the Note pursuant to Fla. Stat. Section 673.3091 as Plaintiff was entitled to enforce the instrument when the loss of the original Note occurred based upon the statements made herein, and which have been stipulated to my all pertinent parties in this action. Plaintiff's loss of possession of the original Note was not the result of a transfer by Plaintiff or a lawful seizure. Plaintiff cannot reasonably obtain possession of the original Note because the original Note's whereabouts cannot be determined. Based upon the foregoing, Fla. Stat. Sec. 678.3081 is applicable and the Plaintiff is entitled to enforce the lost original Note as though producing the original Note. The Court finds that Defendant, SHINUI BUILDER, LLC, who is required to pay the original Note is protected against the loss of the original Note as against any other person to enforce the instrument, as SHINUI BUILDER, LLC agrees to entry of this instant Agreed

Final Judgment.

C. Count II (Foreclosure) is GRANTED against Defendant, SHINUI BUILDER, LLC and all other Defendants.

D. Count III (Suit on Promissory Note) is GRANTED against Defendant, SHINUI BUILDER, LLC and all other Defendants.

3. Plaintiff is entitled to an award of reasonable attorney's fees in the total amount of

\$11,790.00 (\$300/hour for 39.3 total 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. Plaintiff is due the following:

Principal	\$	423,069.57
Interest to the date of this Judgment:	\$	4,958.03
Additional Principal:	\$	370,000.00
Additional Interest:	\$	20,923.63
Insurance Premiums:	\$	3,211.22
Late Fees:	\$	999.00
Bank Fees:	\$	
Attorney's fees and Costs:		
Finding as to reasonable number of hours:		39.3
Finding as to reasonable hourly rate:	\$	300.00
Attorney's fees total:	\$	11,790.00
Title search expense:	\$	275.00
Court / Recording costs:	\$	

		2089.50
Clerk's filing fee:		\$
Service of Process:		\$
		220.00
Diligent search and inquiry:		\$
Publication of Notice of		\$
Action		
		100.00
Other:	\$	
TOTAL:		\$837,635.
		95

that shall bear interest at the rate of 4.31% (as of April 1, 2021) per year or as otherwise prescribed by law, whichever is less, from the date of this Final Judgment.

5. The Mortgage sued on by Plaintiff in this cause constitutes a valid lien on the following property in Bay County, Florida, and legally described as:

LOT 114, LAKE MERIAL PHASE ONE, a subdivision according to the Plat thereof recorded at Plat Book 22, Page 4, in the Public Records of Bay County, Florida.

a/k/a 158 Lake Merial Blvd., Southport,

Florida 32409 Tax I.D. No.: 07504-214-000

and the Mortgage is in default as alleged in the Complaint.

6. Plaintiff holds a lien for the total sum superior to any claim or estate of Defendants on the property described in paragraph 5 above.

7. If the total sum due, 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 by electronic sale on June 10, 2021, at 11:00 o'clock a.m. (Central Time), or as soon thereafter as the sale may proceed, to the highest bidder or bidders for cash, except as set forth hereinafter, at www.Bay.realforeclose.com, in accordance with Chapter 45.031, Florida Statutes.

8. Plaintiff shall advance all subsequent costs of this action and shall be reimbursed for them by the Clerk if Plaintiff is not the purchaser of the property for sale. If Plaintiff is the purchaser, the Clerk shall credit Plaintiff's bid with the total sum with interest and cost accruing subsequent to this judgment, or such part of it, as is necessary to pay the bid in full.

9. On filing the Certificate of Title, the clerk shall distribute the proceeds of the sale and other money collected by the clerk in connection with the sale, so far as they are sufficient, by paying:

first, all of Plaintiff's costs; second, documentary stamps affixed to the Certificate; third, Plaintiff's attorney's fees; and fourth, the total sum due to Plaintiff plus interest at the rate prescribed by law from this date to the date of the sale; and by retaining any amount remaining pending the further order of this court.

10. On filing the Certificate of Title Defendants and all persons claiming under or against Defendants since the filing of the notice of lis pendens shall be foreclosed of all estate or claim in the property, except as to claims or rights under Chapter 718 or Chapter 720, Florida Statutes, if any, and the purchaser at the sale shall be let into possession of the property. Upon the filing of the Certificate of Title, the person named on the Certificate of Title shall be let into possession of the property, subject to the provisions of the "Protecting Tenants at Foreclosure Act of 2009." If any defendant remains in possession of the property, the clerk shall without further order of the court issue forthwith a writ of possession upon request of the person named on the Certificate of Title. Pursuant to *Coral Lakes Community Ass'n, Inc. v. Busey Bank, N.A.*, 30 So.3d 579 (Fla. 2d DCA 2010), if Plaintiff acquires title at the foreclosure sale it shall not be liable to the association for assessments to the extent its Association documents are less stringent on the Plaintiff than Chapter 718.

11. Jurisdiction of this action is retained to enter further orders that are proper including, without limitation, a deficiency judgment.

12. Defendant, Shinui Builder, LLC are liable for any deficiency should Plaintiff pursue a deficiency judgment.

13. 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 LIEN HOLDER 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.

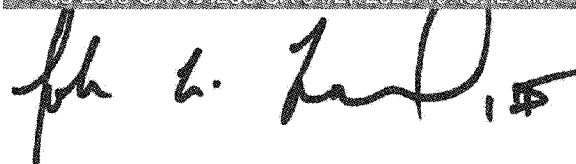
IF YOU ARE THE PROPERTY OWNER AND THIS PROPERTY HAS QUALIFIED FOR THE HOMESTEAD TAX EXEMPTION IN THE MOST RECENT APPROVED TAX ROLL, YOU MAY CLAIM THESE FUNDS YOURSELF. YOU ARE NOT REQUIRED TO HAVE A LAWYER OR ANY OTHER REPRESENTATION AND YOU DO NOT HAVE TO ASSIGN YOUR RIGHTS TO ANYONE ELSE IN ORDER FOR YOU TO CLAIM ANY MONEY TO WHICH YOU ARE ENTITLED. PLEASE CHECK WITH THE CLERK OF THE COURT, BILL KINSAUL, BAY COUNTY COURTHOUSE, 300 EAST 4TH STREET, PANAMA CITY, FLORIDA 32402 (850-763-9061), 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 OFFERING 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 LEGAL SERVICES OF NORTH FLORIDA, INC., 211 EAST 11th STREET, PANAMA CITY, FLORIDA 32401 (850-769-3581), TO SEE IF YOU QUALIFY FINANCIALLY FOR THEIR SERVICES. 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 LEGAL SERVICES OF NORTH FLORIDA, INC., YOU SHOULD DO SO AS SOON AS POSSIBLE AFTER RECEIPT OF THIS NOTICE.

DONE AND ORDERED this Tuesday, April 27, 2021 in Chambers, Bay County Courthouse, Panama City, Bay County, Florida.

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A handwritten signature in black ink, appearing to read "John L. Fishel, II". The signature is written in a cursive style with a horizontal line underneath.

Conformed Copies
To:

John L. Fishel, II, Judge
03-2019-CA-004288-CA 04/27/2021 10:15:12 AM

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BILL KINSAUL
Clerk of Circuit

Court (SEAL)

By:  *Jennifer Sullivan*

Deputy Clerk