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Dav. Co. Chancery Court

IN THE CHANCERY COURT OF DAVIDSON COUNTY

STATE OF TENNESSEE

NATIONAL CITY MORTGAGE CO.,	)	
	)	
Plaintiff,	)	
	)	CIVIL ACTION FILE
v.	)	
	)	NUMBER 09-1903-II
MICHAEL W. BASS and	)	
LATONYAU MAYS-BASS,	)	
	)	
Defendants.	)	

FO-4

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FILED
2010 APR 29 AM 10:18

ORDER AND DEFAULT JUDGMENT

This cause came to be heard on the 16th day of April, 2010 on Plaintiff's Motion for Default Judgment.

Based upon the pleadings, Plaintiff's Motion for Default and Brief in Support thereon, and the record as a whole, the Court finds as follows.

FINDINGS OF FACT

National City Mortgage Co., Plaintiff in the above-styled civil action, filed its Complaint to Set Aside Foreclosure Sale on May 29, 2009. Defendant Michael W. Bass was personally served with process on December 2, 2009. Defendant Latonyau Mays-Bass was personally served with process on October 20, 2009. Neither Defendant Michael W. Bass nor Defendant Latonyau Mays-Bass ("Defendants") filed an answer to the Complaint within

BILL GARRETT, Davidson County
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20100629-0050772

the time allowed by law, and Plaintiff is entitled to verdict and judgment against both Defendants.

Plaintiff is entitled to judgment as if every item and paragraph of the Complaint were supported by proper evidence.

All legal prerequisites to the bringing of this action and ordering the relief sought by Plaintiff, as stated in the Complaint have been met or waived by Defendants' default.

Plaintiff moved this Court to enter a default judgment against each Defendant as a result of his or her failure to answer the Complaint filed in the above-captioned matter.

On or about February 8, 1999, Lori A. Blosser, by and through her Attorney-in-Fact, Arlene Kae Blosser, executed and delivered a Warranty Deed (the "Warranty Deed") to Defendant Michael W. Bass, conveying certain real property commonly known as 302 Hickory Place, Nashville, Tennessee 37214 (the "Property") and more particularly described as follows:

> UNIT H-9, PHASE IV, HICKORY PLACE CONDOMINIUMS OF RECORD IN AMENDMENT TO THE MASTER DEED OF HICKORY PLACE CONDOMINIUMS IN BOOK 7015, PAGE 182 AND REFERRED TO AS EXHIBIT "C" FOUND AT PAGE 185, UNIT H-9 BEING PART OF THE UNIT PLAN FOR PHASE 2-8, SECTION I, HICKORY PLACE CONDOMINIUMS OF RECORD IN PLAT BOOK 6250, PAGE 795; ALL REFERENCES OF RECORD IN THE REGISTER OF DEEDS OFFICE FOR DAVIDSON COUNTY, TENNESSEE, TO WHICH PLAT REFERENCE IS HEREBY MADE FOR A MORE COMPLETE LEGAL DESCRIPTION OF SAID UNIT.
>
> BEING THE SAME PROPERTY CONVEYED TO LORI A. BLOSSER BY DEED FROM ELMA J. BELLEPHANT, UNMARRIED, OF RECORD IN BOOK 10072, PAGE 735, REGISTER'S OFFICE FOR DAVIDSON COUNTY, TENNESSEE.

The Warranty Deed was recorded in the Office of the Register of Deeds for Davidson County, Tennessee, on February 11, 1999, at Book 11337, Page 718, Instrument No. 0548108.

On or about July 31, 2003, to secure a Note of even date executed and delivered by Defendant Michael W. Bass to Plaintiff in the original principal amount of $65,007.00, Defendants executed a Deed of Trust (the "Deed of Trust") in favor of National City as Beneficiary, conveying a first priority security interest the Property, described in the Deed of Trust as follows:

> UNIT M-9, PHASE IV, HICKORY PLACE CONDOMINIUMS OF RECORD IN AMENDMENT TO THE MASTER DEED OF HICKORY PLACE CONDOMINIUMS IN BOOK 7015, PAGE 182 AND REFERRED TO AS EXHIBIT "C" FOUND AT PAGE 185, UNIT H-9 BEING PART OF THE UNIT PLAN FOR PHASE 2-B, SECTION I, HICKORY PLACE CONDOMINIUMS OF RECORD IN PLAT BOOK 6250, PAGE 795; ALL REFERENCES OF RECORD IN THE REGISTER OF DEEDS OFFICE FOR DAVIDSON COUNTY, TENNESSEE, TO WHICH PLAT REFERENCE IS HEREBY MADE FOR A MORE COMPLETE LEGAL DESCRIPTION OF SAID UNIT.
>
> BEING THE SAME PROPERTY CONVEYED TO MICHAEL W. BASS, UNMARIED, BY DEED FROM LORI A. BLOSSER, OF RECORD IN BOOK 11337, PAGE 718, REGISTER'S OFFICE FOR DAVIDSON COUNTY, TENNESSEE.
>
> LATONYAU MAYS-BASS JOINS IN THE DEED OF TRUST SOLELY TO RELINQUISH ANY RIGHTS HE/SHE MAY HAVE IN THE PROPERTY BY VIRTUE OF HIS/HER MARRIAGE TO MICHAEL W. BASS, BUT HE/SHE IS IN NO WAY OBLIGATED FOR THE REPAYMENT OF THE INDEBTEDNESS SECURED BY THE DEED OF TRUST.

The Deed of Trust was recorded in the Office of the Register of Deeds for Davidson County, Tennessee, on July 31, 2003, at Instrument No. 20030731-0108568.

Defendants defaulted under the terms of the Deed of Trust and on March 20, 2008, the Property was offered for sale in accordance with the laws of Tennessee and the terms and provisions of the Deed of Trust at the courthouse in Davidson County, Tennessee, to the highest bidder for cash.

At the auction, the Property was knocked down and sold to Plaintiff National City, the highest bidder, for a bid of $70,931.61; National City subsequently assigned its rights in the Property to the Secretary of Housing and Urban Development ("HUD").

On or about March 20, 2008, the Substitute Trustee, Nationwide Trustee Services, Inc., executed and delivered a Substitute Trustee's Deed (the "Substitute Trustee's Deed") conveying the legal title of the Property to HUD.

The Substitute Trustee's Deed was recorded on July 7, 2008, in the Office of the Register of Deeds for Davidson County, Tennessee, at Instrument No. 20080707-0069506.

The legal description in the Substitute Trustee's Deed is the same legal description contained in the Deed of Trust.

Subsequent to the foreclosure sale, HUD re-conveyed the Property to Plaintiff by Quitclaim Deed (the "Quitclaim Deed") recorded on January 2, 2009, in the Office of the Register of Deeds for Davidson County, Tennessee, at Instrument 20090102-0000259.

The legal description of the Property set forth in the Deed of Trust and in the Substitute Trustee's Deed is not the correct legal description of the Property, in that it refers to the Unit H-9 as Unit M-9 and refers to the Unit Plan for Phase 2-B, rather than the Unit Plan for Phase 2-8; the correct legal description of the Property, which is the legal description contained in the Warranty Deed, correctly identifies the Property as Unit H-9 and the Unit Plan for Phase 2-8; therefore, the Deed of Trust and the Substitute Trustee's Deed fail to correctly identify the Property intended by the parties to be conveyed.

Due to mistake and/or scrivener's error, the legal description of the Property set forth in the Deed of Trust incorrectly describes the Property intended by the parties thereto to be conveyed.

The correct legal description of the Property is the legal description contained in the Warranty Deed, as set forth above.

A reformation of the Deed of Trust, by the incorporation of the correct legal description, is necessary in order to correct the mistake and to correct the real estate records of Davidson County.

As a result of the incorrect legal description set forth in the Deed of Trust, Plaintiff is unable to exercise its rights as intended under the Deed of Trust, including but not limited to the right to invoke the power of sale granted in the Deed of Trust.

An order reforming the Deed of Trust by the incorporation therein of the correct legal description of the Property, which correct legal description is contained in the Warranty Deed, and allowing Plaintiff National City to exercise the rights granted it under and pursuant to the terms of the reformed Deed of Trust is necessary in order to correct the records of the Register of Deeds of Davidson County and grant National City its rights under the Deed of Trust as intended by the parties.

Plaintiff has requested that the Court declare that the foreclosure sale held on March 20, 2008 is invalid.

Plaintiff has also requested that the Court declare the Substitute Trustee's Deed recorded at Instrument 20080707-0069506, the Quitclaim Deed recorded at Instrument 20090102-0000259, and any other deed executed and recorded pursuant to the foreclosure sale null, void and of no legal effect.

Plaintiff has also requested that the Court enter an order and judgment declaring the Deed of Trust recorded at Instrument No. 20030731-0108568 reinstated, that the Deed of Trust remains a lien against the Property and that the parties thereto have the same rights and remedies as though the foreclosure sale never occurred, including but not limited to the right to invoke the power of sale provision contained in the Deed of Trust to non-judicially foreclose on the Property in accordance with the terms of the Deed of Trust.

Plaintiff has also requested that the Court enter an order reforming the Deed of Trust by the incorporation therein of the correct legal description for the Property, which correct legal description is contained in the Warranty Deed recorded at Book 11337, Page 718, Instrument No. 0548108.

Plaintiff has also requested that the Court declare that Defendants are the owners of the Property.

Plaintiff has also requested that the Court declare that Plaintiff has a first priority security interest in the Property.

Plaintiff has also requested that the Court declare that, assuming all contractual prerequisites have been satisfied, the power of sale provision in the reformed Deed of Trust may be utilized by Plaintiff to non-judicially foreclose on the Property in accordance with the terms of the Deed of Trust.

Plaintiff has also requested that the Court declare that such a foreclosure on the Property would be pursuant to the terms of the Deed of Trust and, therefore, is a proper remedy; and that Plaintiff is entitled to proceed with the aforesaid foreclosure, and that the order of this Court be recorded in the Office of the Register of Deeds of Davidson County without any further delay.

THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED:

(a) That Default Judgment be entered against Defendant Michael W. Bass and Defendant Latonyau Mays-Bass;

(b) That the foreclosure sale held on March 20, 2008 is hereby declared to be invalid;

(c) That the Substitute Trustee's Deed recorded at Instrument 20080707-0069506, the Quitclaim Deed recorded at Instrument 20090102-0000259, and any other deed executed and recorded pursuant to the foreclosure sale are hereby declared null, void and of no legal effect;

(d) That the Deed of Trust is hereby reformed by the incorporation therein of the correct legal description for the Property, which correct legal description is contained in the Warranty Deed recorded at Book 11337, Page 718, Instrument No. 0548108 and is accurately set out below, to wit:

> UNIT H-9, PHASE IV, HICKORY PLACE CONDOMINIUMS OF RECORD IN AMENDMENT TO THE MASTER DEED OF HICKORY PLACE CONDOMINIUMS IN BOOK 7015, PAGE 182 AND REFERRED TO AS EXHIBIT "C" FOUND AT PAGE 185, UNIT H-9 BEING PART OF THE UNIT PLAN FOR PHASE 2-8, SECTION I, HICKORY PLACE CONDOMINIUMS OF RECORD IN PLAT BOOK 6250, PAGE 795; ALL REFERENCES OF RECORD IN THE REGISTER OF DEEDS OFFICE FOR DAVIDSON COUNTY, TENNESSEE, TO WHICH PLAT REFERENCE IS HEREBY MADE FOR A MORE COMPLETE LEGAL DESCRIPTION OF SAID UNIT.
>
> BEING THE SAME PROPERTY CONVEYED TO LORI A. BLOSSER BY DEED FROM ELMA J. BELLEPHANT, UNMARRIED, OF RECORD IN BOOK 10072, PAGE 735, REGISTER'S OFFICE FOR DAVIDSON COUNTY, TENNESSEE.

(e) That the Deed of Trust recorded at Instrument No. 20030731-0108568 is hereby reinstated and reformed to

include the correct legal description of the Property as set forth above, that the reformed Deed of Trust remains a lien against the Property and that the parties thereto have the same rights and remedies as though the foreclosure sale never occurred, including but not limited to the right to invoke the power of sale provision contained in the reformed Deed of Trust to non-judicially foreclose on the Property in accordance with the terms of the Deed of Trust;

(f) That Defendants are owners of the Property;

(g) That Plaintiff has a first priority security interest in the Property;

(h) That, assuming all contractual pre-requisites have been satisfied, the power of sale provision in the reformed Deed of Trust may be utilized by Plaintiff to non-judicially foreclose on the Property in accordance with the terms of the reformed Deed of Trust; and

(i) That a foreclosure on the Property would be pursuant to the terms of the reformed Deed of Trust and, therefore, is a proper remedy; and that Plaintiff is entitled to proceed with the aforesaid foreclosure, and that the

order of this Court be recorded in the Office of the Register of Deeds of Davidson County without any further delay.

SO ORDERED this _____ day of _____, 2010.

CHANCELLOR, Chancery Court of
Davidson County, Tennessee

IT IS SO ORDERED, COSTS ARE
TAXED TO THE DEFENDANT(S)

Prepared and submitted by:

Lori L. McGowan
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Telephone No. (678)298-8869

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I HEREBY CERTIFY THAT THIS IS A TRUE COPY
OF ORIGINAL INSTRUMENT FILED IN MY OFFICE.
THIS 10th DAY OF June 2010
CRISTI SCOTT, CLERK & MASTER
BY _____ DEPUTY

IT IS SO ORDERED, COSTS ARE
TAXED TO THE DEFENDANT(S)