

Filing # 109921510 E-Filed 07/08/2020 09:54:36 AM

IN THE COUNTY COURT OF THE
NINETEENTH JUDICIAL CIRCUIT, IN
AND FOR INDIAN RIVER COUNTY,
FLORIDA

CASE NO: 312019CC001200
JUDGE: NICOLE MENZ

THE VILLAS AT THREE OAKS
COMMUNITY ASSOCIATION, INC.,
a Florida not for profit corporation,

Plaintiff,

v.

ALICIA M. WHITTAKER, Individually and as
Sole Successor Trustee of The James C. and
Alicia M. Whittaker Living Trust dated July 3, 1996,
as amended, et al,

Defendants.

_____ /

FINAL JUDGMENT OF FORECLOSURE

(Form Approved by 19th Circuit Amended Administrative Order 2017-05)

This action was heard before the Court on the Stipulation for Entry of Consent Final Judgment of Foreclosure filed by the parties. On the evidence presented,

IT IS ORDERED AND ADJUDGED that:

1. **Motion Granted.** The Motion for Summary Judgment of Foreclosure is granted.
2. **Value of Claim.** At the initiation of this action, in accordance with section 28.241(1)(a)2.b., Florida Statutes, plaintiff estimated the amount in controversy of the claim to be \$1,455.38. In accordance with section 28.241(1)(a)2.c., Florida Statutes, the Court identifies the actual value of the claim to be \$3,498.32 as set forth below. For any difference between the estimated amount in controversy and the actual value of the claim that requires the filing fee to be adjusted, the Clerk shall adjust the filing fee. In determining whether the filing fee needs to be

adjusted, the graduated filing fee scale in section 28.241(1)(a)2.d., Florida Statutes, controls. If an excess filing fee was paid, the Clerk shall provide a refund of the excess fee. If an additional filing fee is owed, the plaintiff shall pay the additional fee at least five business days prior to the judicial sale. If any additional filing fee owed is not paid prior to the judicial sale, the Clerk shall cancel the judicial sale without further order of the Court.

3. **Amounts Due.** Plaintiff, The Villas at Three Oaks Community Association, Inc., c/o Elliott Merrill Property Management, 835 20th Place, Vero Beach, 32960 Florida is due as of May 1, 2020 (inclusive of the July Assessment):

Principal		\$ 3,498.32
Interest on the note and mortgage from <u>n/a</u>		\$ 0.00
Per diem interest at 4.75% from <u>n/a</u>		\$ 0.00
Title search expense		\$ 0.00
Taxes		\$ 0.00
Insurance premiums		\$ 0.00
Attorney's Fees and Legal Assistant Fees		
Finding as to reasonable number of hours:	1.75	
Finding as to reasonable hourly rate:		\$325.00
Finding as to reasonable number of hours:	15.40	
Finding as to reasonable hourly rate:		\$285.00
Finding as to reasonable number of hours:	9.8	
Finding as to reasonable hourly rate:		\$275.00
Finding as to reasonable number of hours:	14.95	
Finding as to reasonable hourly rate:		\$150.00
Finding as to reasonable number of hours:	0.2	
Finding as to reasonable hourly rate:		\$100.00
Finding as to reasonable number of hours:	1.0	
Finding as to reasonable hourly rate:		\$90.00
	Fees Total	\$10,005.25
Court costs		
Record Fee/Death Certificates		\$20.00
Filing Fees		\$345.39
Summons Fees		\$80.00
Service Fees		\$280.00
Title Search Fees		\$100.00
Cost Total		\$825.39
TOTAL		\$14,328.96

4. **Interest.** The total amount in paragraph 3 shall bear interest from this date forward at the prevailing statutory rate of interest.

5.

A) Plaintiff's Lien on Property. Plaintiff holds a lien for the total sum superior to all claims or estates of defendants (with the exception of any assessments that are superior pursuant to Section 718.116, or 720.3085, Florida Statutes) on the following described property in Indian River County, Florida:

Lot 9, The Villas At Three Oaks, according to the map or plat thereof as recorded in Plat Book 26, Page 90, Public Records of Indian River County, Florida.

Property Address: 1814 Oakgrove Court, Vero Beach, FL 32966

B) Equitable Lien. Charles A. Sullivan, Sr., Esq., 1601 20th Street, Vero Beach, FL 32960, is entitled to an equitable lien on the property in the amount of \$17,000.00 for payment of real property taxes.

6. **Sale of Property.** If the total sum with interest at the rate described in paragraph 2 and all costs accrued subsequent to this judgment are not paid, the clerk of this court shall sell the property at public sale on October 19, 2020 to the highest bidder for cash, except as prescribed in paragraph 7, by electronic sale at www.indian-river.realforeclose.com beginning at 10:00am in accordance with section 45.031, Florida Statutes. **The public sale shall not be postponed or canceled without a court order. All orders postponing or canceling the sale must be filed with the clerk of court no later than 5:00 p.m. five (5) business days before the sale date. Counsel for plaintiff must be certain that all sale and clerk fees are paid and that the original proof of publication is filed no less than five (5) business days before the sale date. Failure to timely file the original proof of publication of the notice of sale and pay the sale and clerk fees will**

stop the sale. Additionally, the failure of plaintiff's counsel to pay the sale fee and properly and timely publish the notice of sale may result in sanctions against the plaintiff, plaintiffs counsel individually, and the law firm representing the plaintiff. Any electronic sale by the clerk shall be in accordance with the written administrative policy for electronic sales published by the clerk at the official website for the clerk and posted in the public areas of the clerk's offices.

7. **Costs.** 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, provided, however, that the purchaser of the property for sale shall be responsible for the documentary stamps payable on the certificate of title. If plaintiff is the purchaser, plaintiff shall file an affidavit within 5 business days and the clerk shall credit plaintiff's bid with the total sum with post-judgment interest and costs accruing subsequent to this judgment, or such part of it, as is necessary to pay the bid in full. The clerk shall receive the service charge imposed in Section 45.031, Florida Statutes.

8. **Distribution of Proceeds.** On filing the certificate of title, the clerk shall distribute the proceeds of 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 attorneys' fees; fourth, the total sum due to plaintiff, less the items paid, plus interest at the rate prescribed in paragraph 3 from this date to the date of the sale, by paying off the equitable lien held by Charles A. Sullivan, Sr and by retaining any remaining amount pending the further order of this court.

9. **Right of Redemption.** On filing the certificate of sale, defendant(s) and all persons claiming under or against defendant(s) 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.

10. **Right of Possession.** Upon the filing of the certificate of title, the person named on the certificate of title shall be let into possession of the property. If any defendant or tenant remains in possession of the property, an Order Granting the Motion for Writ of Possession shall be entered without further notice or hearing, subject to the purchaser's compliance with Section 83.561, Florida Statutes.

11. **Jurisdiction Retained.** Jurisdiction of this action is retained to enter further orders that are proper including, without limitation, awards of attorney's fees and costs incurred after entry of this judgment, a deficiency judgment, claims on surplus funds, writs of possession and such other supplemental relief or judgments as may be appropriate.

12. **Post Final Judgment Priority.** Plaintiff shall have first priority as to all post Final Judgment sums, including but not limited to, attorneys' fees, costs, assessments and late fees.

13. **Remaining Surplus.** The Clerk of Court is instructed to retain all remaining surplus monies in the Court Registry pending further Order of Court including but not limited to a determination of the property ownership records.

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 THE FINAL JUDGMENT. IF YOU ARE A SUBORDINATE LIENHOLDER CLAIMING A RIGHT TO FUNDS REMAINING AFTER THE SALE, IF ANY, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN THE DATE THAT THE CLERK REPORTS THE FUNDS AS UNCLAIMED. IF YOU FAIL TO FILE A TIMELY 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 CLERK OF COURT, INDIAN RIVER COUNTY, 2000 16TH AVENUE, VERO BEACH, FL 32960, (772) 770-5185 (Civil Division), WITHIN 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 FLORIDA RURAL LEGAL SERVICES MONDAY THROUGH FRIDAY AT 1-888-582-3410 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 FLORIDA RURAL LEGAL SERVICES AT 1-888-582-3410 FOR ASSISTANCE, YOU SHOULD DO SO AS SOON AS POSSIBLE AFTER RECEIPT OF THIS NOTICE.

DONE AND ORDERED on July 8, 2020 in Vero Beach, Indian River County, Florida.

07/08/2020 08:41:56

eSigned by MENZ, NICOLE 07/08/2020 08:41:56 c:\JA2020

**NICOLE P. MENZ
COUNTY COURT JUDGE**

Copies Furnished by E-Portal to:

Plaintiff's Counsel, John P. Carrigan, Esq., Ross Earle Bonan & Ensor, P.A.
(jpc@rcblawpa.com)

Plaintiff's counsel shall serve paper copies on all Defendants not otherwise served by U.S. Mail to:

Judgment Holder:

Board of Directors
The Villas at Three Oaks Community Association, Inc.
c/o Elliott Merrill Property Management
835 20th Place
Vero Beach, FL 32960

Defendants:

Kane Fischer
c/o Charles A. Sullivan, Sr., Esq.
Sullivan & Sullivan, 1601 20th St.
Vero Beach, FL 32960

William Sikora
1814 Oakgrove Court
Vero Beach, FL 32966

James C. Whittaker
1814 Oakgrove Court
Vero Beach, FL 32966

Unknown Spouse of James C. Whittaker
1814 Oakgrove Court
Vero Beach, FL 32966

Unknown Tenant I and Unknown Tenant II
1814 Oakgrove Court
Vero Beach, FL 32966

Record & Return

to Plaintiff's Counsel:

John P. Carrigan, Esquire, Ross Earle Bonan & Ensor, P.A., Post Office Box 2401, Stuart, Florida
34995