

Filing # 197423891 E-Filed 05/01/2024 04:07:23 PM

**IN THE CIRCUIT COURT FOR THE  
NINETEENTH JUDICIAL CIRCUIT IN AND  
FOR INDIAN RIVER COUNTY, FLORIDA  
CIRCUIT CIVIL DIVISION**

**THE BANK OF NEW YORK MELLON FKA  
THE BANK OF NEW YORK, AS TRUSTEE  
FOR THE CERTIFICATEHOLDERS  
CWALT, INC., ALTERNATIVE LOAN  
TRUST 2006-14CB MORTGAGE PASS-  
THROUGH CERTIFICATES, SERIES 2006-  
14CB**

**Plaintiff(s),**

**vs.**

**MARK S. CUNNINGHAM; THE FARMS  
PROPERTY OWNERS ASSOCIATION, INC.;  
TD BANK, NATIONAL ASSOCIATION**

**CASE NO. 31-2020-CA-000126**

**Defendant(s).**

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**CONSENT FINAL JUDGMENT OF FORECLOSURE**

**THIS CAUSE** came before the Court for hearing on May 1, 2024, upon Plaintiff's Motion for Summary Judgment of Foreclosure and upon agreement of the parties, reviewing the Court file and being otherwise duly advised in the premises, it is

**ORDERED AND ADJUDGED that:**

1. **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 \$479,163.00. In accordance with section 28.241(1)(a)2.c., Florida Statutes, the Court identifies the actual value of the claim to be \$703,023.00, 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 (5) 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.

**2. Amounts Due.** Plaintiff, THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATEHOLDERS CWALT, INC., ALTERNATIVE LOAN TRUST 2006-14CB MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-14CB, whose address is PO Box 10826 Greenville, SC 29603-0826, is due:

Principal:		\$274,627.53
Interest on the note and mortgage from 01/01/2009 to 10/23/2023		\$269,458.72
Per diem rate of \$49.85 from 10/23/2023 to 05/01/2024:		\$9,521.35
Certified Mail Cost:		\$22.52
Property Inspections:		\$1,050.00
BPO/Appraisal Cost:		\$24.25
Title Cost:		\$1,026.50
Short Pmt Posting:		\$6.00
Property Preservation:		\$887.50
Property Registration:		\$12.40
Prior Servicer Cost:		\$3,372.80
Prior Attorney Fees and Cost:		\$5,135.00
Escrow Advance:		\$129,792.58
<b><u>Attorneys' Fees:</u></b>		
Finding as to reasonable number of hours	30.74	\$6,609.10
Foreclosure Flat Fee:		\$1,425.00
<b><u>Court Costs,:</u></b>		
Re-Open Fee	\$51.75	
Court Costs Total:		\$51.75
<b>TOTAL</b>		<b>\$703,023.00</b>

**3. Interest.** The total amount in paragraph 2 shall bear interest at the legal rate, which was 9.34% per annum as of April 1, 2024.

**4. Lien on Property.** Plaintiff holds a lien for the total sum superior to all claims or estates of defendant(s), (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, FL:

**LOT 'OUTPARCEL' OF 'THE FARMS' SUBDIVISION. A PORTION OF THE TRACT 8, SECTION 19, TOWNSHIP 33 SOUTH, RANGE 39 EAST, ACCORDING TO THE LAST GENERAL PLAT OF THE LANDS OF THE INDIAN RIVER FARMS COMPANY SUBDIVISION, AS FILED IN THE PLAT BOOK 2, PAGE 25, OF THE PUBLIC RECORDS OF ST. LUCIE COUNTY, FLORIDA, SAID LANDS NOW LYING AND BEING IN INDIAN**

RIVER COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID TRACT 8, SECTION 19, TOWNSHIP 33 SOUTH, RANGE 39 EAST, RUN N00°16'28"E ALONG THE EAST LINE OF SAID TRACT 8, 80.00 FEET, THENCE N89°43'36"W, 60.00 FEET TO THE INTERSECTION OF THE WEST RIGHT OF WAY LINE OF 66TH AVENUE, S.W. AND THE NORTH RIGHT OF WAY LINE OF 5TH STREET, S.W. FOR THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PORTION OF LAND, THENCE CONTINUE N89°43'36"W ALONG THE SAID NORTH RIGHT OF WAY LINE OF 5TH STREET, S.W., 325.87 FEET, THENCE N00°12'50"E, 583.01 FEET TO THE SOUTH RIGHT OF WAY LINE OF 3RD PLACE, S.W., THENCE S89°45'13"E ALONG THE SOUTH RIGHT OF WAY LINE OF 3RD PLACE S.W., 301.46 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE, CONCAVE TO THE SOUTH, THE RADIUS POINT TO WHICH BEARS S00°14'47"W, 25.00 FEET THENCE RUN SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 90°01'41" AND A ARC RADIUS DISTANCE OF 39.28 FEET TO THE POINT OF TANGENCY, SAID POINT OF TANGENCY INTERSECTING ON THE WEST RIGHT OF WAY LINE OF SAID 66TH AVENUE, S.W., THENCE RUN S00°16'28"W ALONG THE SAID WEST RIGHT OF WAY LINE OF 66TH AVENUE, S.W., 558.15 FEET TO THE POINT OF BEGINNING.

SAID LAND LYING AND BEING IN INDIAN RIVER COUNTY, FLORIDA.

Property address: 475 66th Ave SW, Vero Beach, FL 32968

5. **Sale of Property.** If the total sum with interest at the rate described in Paragraph 3 and all costs accrued subsequent to this judgment are not paid, the Clerk of this Court must sell the subject property at public sale on **September 3, 2024**, to the highest bidder for cash, except as prescribed in paragraph 7, by electronic sale at [www.indianriver.realforeclose.com](http://www.indianriver.realforeclose.com) beginning at 10:00 AM in accordance with Section 45.031, Florida Statutes. **The public sale must 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, Plaintiff's counsel individually, and the law firm representing the plaintiff.** Any

electronic sale by the Clerk must 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.

**6. Costs.** Plaintiff must advance all subsequent costs of this action and must 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 must be responsible for the documentary stamps payable on the certificate of title. If Plaintiff is the purchaser, Plaintiff must file an affidavit within 5 business days and the Clerk must credit the 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 must receive the service charge imposed in Section 45.031, Florida Statutes.

**7. Distribution of Proceeds.** On filing the certificate of title, the Clerk must 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 sale; and by retaining any remaining amount pending the further order of this court.

**8. 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 must be foreclosed of all estate or claim in the property, and defendant's right of redemption as prescribed by section 45.0315, Florida Statutes, must be terminated, except as to the rights of a bona fide tenant occupying residential premises under the federal Protection Tenants at Foreclosure Act, 12 U.S.C. sec. 5220, note, or section 83.5615, Florida Statutes, and claims or rights under chapter 718 or chapter 720, Florida Statutes, if any.

**9. Right of Possession.** On the filing of the certificate of title, the person named on the certificate of title must be let into possession of the property subject to the rights of a bona fide tenant occupying residential premises under the Federal Protecting at Foreclosure Act, 12 U.S.C. sec 5220, note, or section 83.5615, Florida Statutes. If any defendant or tenant remains in possession of the property, an Order Granting the Motion For Writ of Possession must be entered without further notice or hearing, subject to the purchaser's compliance with Section 83.5615, Florida Statutes.

**10. Jurisdiction Retained.** Jurisdiction of this action is retained to enter further orders that are proper including, without limitation, a deficiency judgment, writs of possession and such supplemental relief or judgments as may be appropriate.

**11. Attorney Fees.** The court finds, based upon the affidavits/testimony presented and upon inquiry of counsel for the Plaintiff, that 30.74 hours were reasonably expended by Plaintiff's counsel and that an hourly rate of \$215.00 is appropriate in addition to the Foreclosure Flat fee of \$1,425.00 is appropriate. Plaintiff's counsel represents that the attorneys' fees awarded does not exceed its contract fee with the Plaintiff. The court finds that there is/are no reduction or enhancement factors for consideration by the court pursuant to *Florida Patients Compensation Fund v. Rowe*, 472 So. 2D 1145 (Fla. 1985).

**12.** If Proceeds are to be distributed to Plaintiff or Plaintiff's Counsel, the Clerk is authorized to issue a single check made payable to counsel for Plaintiff.

**13.** If the Plaintiff is the purchaser at the sale, the Plaintiff may assign its bid to a third-party assignee by recording and filing an Assignment of Bid and the Clerk of Court is hereby directed to issue a Certificate of Title to the assignee named therein.

**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 THE COURT FOR INDIAN RIVER COUNTY, TELEPHONE: (772) 770-5185, 2000 16TH AVENUE, VERO BEACH, FL 32960, 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, 510 SOUTH US HIGHWAY 1, SUITE 1, FORT PIERCE, FL 34950, 772-466-4766, 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, YOU SHOULD DO SO AS SOON AS POSSIBLE AFTER RECEIPT OF THIS NOTICE.**

**DONE AND ORDERED** in Indian River County, FL, this the 1<sup>st</sup> day of May 2024.

*eSigned by Judge Cynthia L. Cox* 05/01/2024 2:28 pm

Circuit Judge

**A COPY OF THIS ORDER IS BEING SERVED ON THE FOLLOWING PARTIES VIA THE E-FILING PORTAL**

Padgett Law Group, Attorney for Plaintiff  
attorney@padgettlawgroup.com

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Jacob E. Ensor, Esq. (Counsel for The Farms Property Owners Association, Inc.)  
foreclosures@reblawpa.com

**COUNSEL FOR PLAINTIFF SHALL IMMEDIATELY SERVE A COPY OF THIS ORDER ON THE FOLLOWING PARTIES AND FILE A CERTIFICATE OF SERVICE IN THIS COURT FILE:**

TD Bank, National Association  
1011 Federal Highway  
Deerfield Beach, FL 33441