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

HSBC BANK USA, N.A., AS TRUSTEE ON
BEHALF OF ACE SECURITIES CORP.
HOME EQUITY LOAN TRUST
AND FOR THE REGISTERED HOLDERS
OF ACE SECURITIES CORP.
HOME EQUITY LOAN TRUST,
SERIES 2007-HE2, ASSET
BACKED PASS-THROUGH CERTIFICATES,

Plaintiff,

CASE NO. 31 2023 CA 000766

v.

MARY P. WILLIAMS A/K/A MARY WILLIAMS;
MARY MALONE; THE BOARD OF COUNTY
COMMISSIONERS OF INDIAN RIVER
COUNTY; PORTFOLIO RECOVERY ASSOCIATES, LLC;

Defendant(s).

_____ /

FINAL JUDGMENT OF FORECLOSURE

THIS ACTION was heard before the Court on August 14, 2024 after reviewing the Court file, business records of Plaintiff, hearing sworn testimony from Mary Malone,¹ argument of counsel, Mark Elia and being otherwise duly advised in the premises, it is

ORDERED AND ADJUDGED that:

1. **Final Judgment.** Plaintiff is entitled to entry of final judgment.

2. **Amounts Due.** Plaintiff, HSBC BANK USA, N.A., AS TRUSTEE ON BEHALF OF ACE SECURITIES CORP. HOME EQUITY LOAN TRUST AND FOR THE REGISTERED HOLDERS OF ACE SECURITIES CORP. HOME EQUITY LOAN TRUST, SERIES 2007-HE2, ASSET BACKED PASS-THROUGH CERTIFICATES (hereafter, "**Plaintiff**"), whose mailing address is c/o PHH Mortgage Corporation, P.O. BOX 24605, West Palm Beach, FL 33416-4605, is due:

Principal	\$	37,732.38
Interest from 09/01/2022 to 08/14/2024	\$	1,473.35
Escrow Balance	\$	8,988.81

¹Mary Williams, who suffers from dementia, appeared in court with her family member, Mary Malone but did not testify. Mary Malone sought \$4,000 she has incurred in repairs to the home and has attempted to bring the mortgage current but because she is not on the loan, has been refused any information. Her options to purchase, payoff or redeem on behalf of the borrower were explained in open court.

Late Charges	\$	38.88
Shared appreciation	\$	26,904.50
Recoverable Corporate Advances:	\$	6,954.45
Property Inspection - \$470.00		
Grass Cut - \$260.00		
Appraisal Fee - \$540.00		
Door Lock - \$155.20		
Debris Removal - \$261.00		
BPO - \$170.00		
Lock Box - \$70.00		
Yard Care - \$833.33		
Title Search - \$303.25		
Attorney's Fees - \$1,939.00 ²		
Attorney's Costs - \$1,952.67		
TOTAL	\$	82,092.37

3. **Interest.** The total amount in paragraph 2 must bear interest from this date forward at the prevailing statutory rate of interest.

4. **Lien on Property.** Plaintiff holds a lien for the total sum superior to all claims or estates of defendant(s), MARY P. WILLIAMS A/K/A MARY WILLIAMS; MARY MALONE; THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY; PORTFOLIO RECOVERY ASSOCIATES, LLC; (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 17, BLOCK 1, DIXIE GARDENS, UNIT 3, SECTION 2, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 6, PAGE 28, INDIAN RIVER COUNTY, FLORIDA. Property address: **754 5TH PL SW, VERO BEACH, FL 32962**

5. **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 must sell the property at public sale on **October 8, 2024** to the highest bidder for cash, except as prescribed in paragraph 6, by electronic sale at **Indian River County beginning at 10:00 a.m. www.indian-river.realforeclose.com** **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**

²There was no testimony and no affidavits of attorney's fees filed or presented and no competent, substantial evidence supporting the award of attorney's fees. Plaintiff's attorney asserted that they entered into a flat fee contract with the client and provided their transaction history of payments. Because of the default of the Defendant and failure to object, the Court awards 3% of the principal (including shared appreciation) and reserves jurisdiction to receive evidence as to the reasonable attorneys fees incurred herein.

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 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 2 from this date to the date of the sale; and by retaining any remaining amount pending 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.** It was undisputed that the property is and has been vacant. 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. **Attorneys' Fees.** According to their account transaction pay history filed with the Court, Plaintiff has paid their attorney a flat rate of \$4,000.¹ There was no other affidavit, evidence or information regarding attorney's fees incurred or the attorney's hourly rate or the number of hours reasonably incurred in this matter. See *Nicholas v. US Bank*, 350 So. 2d 800 (Fla. 5th DCA 2022); *Sands v. Deutsche Bank*, 251 So. 3d 359 (Fla. 5th DCA 2018); *Petrovsky v. HSBC Bank*, 185 So. 3d 700 (Fla. 4th DCA 2016);

Colson v. State Farm, 183 So. 3d 1038 (Fla. 2d DCA 2015): "Reasonably expended" means the time that *ordinarily* would be spent by lawyers in the community to resolve the particular type of dispute. *It is not necessarily the number of hours actually expended by counsel in the case or the amount contracted with the client.* Rather, the court must consider the number of hours that *should reasonably have been expended in that particular case*. The magnitude of the case is also a consideration. In determining the reasonableness of an award of attorneys' fees, the court should utilize the following criteria: (1) the time and labor required, the novelty and difficulty of the question involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstance; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services, and; (8) whether the fee is fixed or contingent. See *Rowe, supra*; *Centex-Rooney v. Martin County*, 725 So. 2d 1255 (Fla. 4th DCA 1999) and *Estate of Platt*, 586 So. 2d 328 (Fla. 1991). Whether the work was reasonably necessary is the test for assessing fees against the opposing party. In deciding upon amounts to be awarded as attorney's fees, a trial court must consider not only the reasonableness of the fees charged but the appropriateness of the number of hours counsel engaged in performing these services as well. The Court should review the nature of the services rendered and the necessity for their performance, along with the reasonableness of the charges. See *Miller v. First American Bank*, 607 So. 2d 483 (Fla. 4th DCA 1992); *Mercy Hospital v. Johnson*, 431 So. 2d 687 (Fla. 3d DCA 1983); *Allstate v. Baer*, 334 So. 2d 135 (Fla. 3d DCA 1976) and *Guthrie v. Guthrie*, 357 So. 2d 247 (Fla. 4th DCA 1978).

11. Jurisdiction Retained. Jurisdiction of this action is retained to enter further orders that are proper including, without limitation, application for property preservation expenses and attorneys fees, a deficiency judgment, writs of possession and such supplemental relief or judgments as may be appropriate.

12. If 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 assignee without further payment.

13. Pursuant to *Ross v. Wells Fargo Bank*, 2013 Fla. App. LEXIS 2143, *2-3 (Fla. 3d DCA Feb. 13, 2013), the Court retains jurisdiction of this action to enter Orders relating to supplemental proceedings to address any omitted parties who may possess an interest in the subject property post-judgment.

14. The court retains jurisdiction to enter further orders upon proper application and/or hearing to permit Plaintiff's recovery of advances, including but not limited to: taxes, insurance, inspection, repairs, property preservation, publication, attorney fees, and costs, by amended or supplemental judgment or order, and from any and all foreclosure sale proceeds and surplus funds from the foreclosure sale.

15. Any sale proceeds distributed by the Clerk of Court to Plaintiff as a result of a third-party bidder at foreclosure sale shall be made payable to the Plaintiff of record.

16. If this judgment is signed on a date after the date of hearing listed at the beginning of this judgment, the Clerk of Court is hereby directed to treat this judgment as having been entered *nunc pro tunc* to the date of hearing, to wit: August 14, 2024, so that statutory post-judgment interest begins to accrue on the day following the hearing.

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, 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, 2000 16TH AVENUE, CIVIL DEPARTMENT, ROOM 136, VERO BEACH, FL 32960, (772) 226-3100, 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 SERVICE – FORT PIERCE OFFICE, 510 SOUTH US HIGHWAY 1, SUITE 1, FORT PIERCE, FLORIDA 34948, (772) 466-4776, 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 SERVICE – FORT PIERCE OFFICE, (772) 466-4776, FOR ASSISTANCE, YOU SHOULD DO SO AS SOON AS POSSIBLE AFTER RECEIPT OF THIS NOTICE.

DONE AND ORDERED on AUGUST 14, 2024 at Vero Beach, Indian River County, Florida.

eSigned by Judge Cynthia L. Cox 08/16/2024 3:28 pm

CYNTHIA L. COX, Circuit Judge

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

VAN NESS LAW FIRM, PLC C/O MARK ELIA, ESQUIRE 1239 E. NEWPORT CENTER DRIVE, SUITE #110 DEERFIELD BEACH, FLORIDA 33442 **Attorney for Plaintiff**
Pleadings@vanlawfl.com

WILLIAM K. DEBRAAL, ESQ. 1801 27TH STREET VERO BEACH, FL 32960 **Attorney for Indian River County** Email: e-service@ircgov.com; bdebraal@ircgov.com

STACIE E. VECCHIONE, ESQ. VECCHIONE & ASSOCIATES, P.A.

5944 CORAL RIDGE DRIVE – SUITE 113 CORAL SPRINGS, FLORIDA 33076

Guardian Ad Litem on behalf of Mary P. Williams a/k/a Mary Williams Email:

Stacie@vecchionelegal.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:

MARY MALONE 3840 44TH STREET VERO BEACH, FL 32967 @

malonemaryjean50@gmail.com

PORTFOLIO RECOVERY ASSOCIATES, LLC C/o CORPORATION SERVICE

COMPANY 1201 HAYS STREET TALLAHASSEE FL 32301

BOARD OF IRCC 1801 27TH ST VERO BEACH, FL 32960