

Filing # 210567363 E-Filed 11/08/2024 11:10:02 AM

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

PNC Bank, National Association,
Plaintiff(s),
v.

CASE NO. 31 2023 CA 000881

Jerry Kevin Bynum, Unknown Spouse of
Jerry Kevin Bynum; United States of America
Acting on Behalf of The Department of
Treasury - Internal Revenue Service; Banack
Terrace Homeowners Association Inc.,
Defendant(s).

_____ /

FINAL JUDGMENT OF FORECLOSURE

THIS ACTION was heard before the Court on **November 8, 2024** and on the evidence presented and being otherwise duly advised in the premises,

IT IS ORDERED AND ADJUDGED that:

1. **Motion Granted.** There is no dispute of material facts and plaintiff's motion for summary judgment is granted.

2. **Amounts Due.** Plaintiff, PNC Bank, National Association, whose address is 3232 Newmark Drive, Miamisburg, OH 45342, is due:

Principal	\$63,713.27
Deferred Principal Balance	\$96,654.50
Interest on the note and mortgage at 3.875%	
From 02/01/2023 to 11/8/24 (646 x \$6.76)	\$4,366.96
Pre-Accelerated Late Charge	\$291.90
Title search expense	\$45.00
Escrow Advance	\$2,087.03
Attorneys' fees	
Flat Fees - \$4,750.00	
Finding as to reasonable number of Attorney hours at \$35.00 ph: 1 - \$35.00	
Finding as to reasonable number of Attorney hours at \$300.00 ph: 1.66 - \$498.00	
Attorneys' fees total	\$5,283.00
Court costs:	
Filing fee	\$1,155.58

Service of Process	\$837.45
Court Reporter	\$250.00
Additional Costs:	
BPO	\$110.00
Property Inspections	\$135.00
Lawn Maintenance	\$575.00
TOTAL	\$175,504.69

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), (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:

ALL THAT CERTAIN PARCEL OF LAND SITUATED IN THE COUNTY OF INDIAN RIVER AND STATE OF FLORIDA:

PARCEL 1:

ALL THAT PART OF TRACT 2, SECTION 8, TOWNSHIP 33 SOUTH, RANGE 39 EAST, ACCORDING TO THE LAST GENERAL PLAT OF LANDS OF THE INDIAN RIVER FARMS COMPANY SUBDIVISION, AS RECORDED IN PLAT BOOK 2, PAGE 25, PUBLIC RECORDS OF ST. LUCIE COUNTY, FLORIDA, SAID LAND NOW LYING AND BEING IN INDIAN RIVER COUNTY, FLORIDA. BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FROM THE NORTHEAST CORNER OF SAID TRACT 2, RUN SOUTH 89°51`39" WEST ALONG THE NORTH LINE OF SAID TRACT 2, A DISTANCE OF 321.79 FEET TO THE EAST LINE OF THE WEST 11.33 ACRES OF THE EAST 21.33 ACRES OF SAID TRACT 2, SAID EAST LINE ALSO BEING THE WEST LINE OF THE EAST 10.00 ACRES OF SAID TRACT 2 AND POINT OF BEGINNING.

FROM SAID POINT OF BEGINNING RUN SOUTH 00°36`37" WEST ALONG SAID EAST LINE OF THE WEST 11.33 ACRES OF THE EAST 21.33 ACRES, A DISTANCE OF 660.31 FEET; THENCE RUN SOUTH 89°33`48" WEST, A DISTANCE OF 259.29 FEET; THENCE RUN NORTH 04°28`09" WEST, A DISTANCE OF 206.42 FEET TO A POINT OF CUSP ON THE 60.00 FEET WIDE PRIVATE ROAD RIGHT-OF-WAY "BANACK TERRACE - ROADWAY PLAT" AS RECORDED IN PLAT BOOK 16, PAGES 63 THROUGH 63A OF THE PUBLIC RECORDS OF INDIAN RIVER COUNTY, FLORIDA; THENCE RUN THE FOLLOWING ALONG THE CURVE OF SAID ROAD

RIGHT-OF-WAY NORTHEASTERLY HAVING A RADIUS OF 50.00 FEET, A CENTRAL ANGLE OF 103°37'21", SUBTENDED BY A CHORD BEARING AND DISTANCE OF NORTH 02°57'30" EAST, 78.60 FEET AND AN ARC DISTANCE OF 90.43 FEET TO A POINT OF REVERSE CURVATURE; THENCE RUN NORTHWESTERLY ALONG THE CURVE HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 35°55'34", SUBTENDED BY A CHORD BEARING AND DISTANCE OF NORTH 03°53'23" WEST, 15.42 FEET AND AN ARC DISTANCE OF 15.68 FEET TO THE POINT OF TANGENCY; THENCE RUN NORTH 12°55'36" WEST, A DISTANCE OF 162.29 FEET; THENCE RUN NORTH 23°57'43" WEST, A DISTANCE OF 156.93 TO A POINT OF CURVATURE; THENCE RUN NORTHEASTERLY ALONG THE CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 93°19'19", SUBTENDED BY A CHORD BEARING AND DISTANCE OF NORTH 22°41'56" EAST, 36.37 FEET AND AN ARC DISTANCE OF 40.72 FEET TO A POINT OF TANGENCY AND THE NORTH LINE OF THE AFOREMENTIONED TRACT 2, SAID LINE ALSO BEING THE SOUTH RIGHT-OF-WAY LINE OF THE "MAIN CANAL" INDIAN RIVER FARMS WATER CONTROL DISTRICT 300 FOOT WIDE RIGHT-OF-WAY, RECORDED IN DEED BOOK 48, PAGE 23, PUBLIC RECORDS OF ST. LUCIE COUNTY, FLORIDA; THENCE RUN NORTH 69°21'36" EAST ALONG SAID NORTH LINE OF TRACT 2 AND SOUTH RIGHT-OF-WAY LINE OF "MAIN CANAL", A DISTANCE OF 81.91 FEET; THENCE RUN NORTH 89°51'39" EAST ALONG SAID NORTH LINE OF TRACT 2, A DISTANCE OF 295.62 FEET TO THE POINT OF BEGINNING. CONTAINING: 200,228.97 S.F. OR 4.60 ACRES

Property Address: 1550 Banack Ter, Vero Beach, FL 32966.

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 DECEMBER 18, 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 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. 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. Because a default judgment has been entered against the mortgagor and because the fees requested do not exceed 3% of the principal amount owed at the time the complaint was filed, it is not necessary for the court to hold a hearing or adjudge the requested attorneys' fees to be reasonable. Plaintiff's counsel represents that the attorney fee awarded does not exceed its contract fee with the plaintiff. The court finds that there are no reduction or enhancement factors for consideration by the court under *Florida Patients Compensation Fund v. Rowe*, 472 So. 2d 1145 (Fla. 1985). (If the court has found that there are reduction or enhancement factors to be applied, then such factors must be identified and explained herein).

The requested attorneys' fees are a flat rate fee that the firm's client has agreed to pay in this matter. Given the amount of the fee requested and the labor expended, the court finds that a lodestar analysis is not necessary and that the flat fee is reasonable.

11. **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.

12. **Reformation.** The Court finds that Plaintiff has discovered an error in the legal description of the subject property in the insured Mortgage recorded on November 15, 2005, in Official Records Book 1959, at Page 1591, of the Public Records of Indian River County, Florida, in that it contains a mutual mistake due to that certain defective Subject mortgage including an typo in degree reference as follows:

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FROM SAID POINT OF BEGINNING RUN SOUTH 00°36'37" WEST ALONG SAID EAST LINE OF THE WEST 11.33 ACRES OF THE EAST 21.33 ACRES, A DISTANCE OF 660.31 FEET; THENCE RUN SOUTH 89°33'48" WEST, A DISTANCE OF 259.29 FEET; THENCE RUN NORTH 04°28'09" WEST, A DISTANCE OF 206.42 FEET TO A POINT OF CUSP ON THE 60.00 FEET WIDE PRIVATE ROAD RIGHT-OF-WAY "BANACK TERRACE - ROADWAY PLAT" AS RECORDED IN PLAT BOOK 16, PAGES 63 THROUGH 63A OF THE PUBLIC RECORDS OF INDIAN RIVER COUNTY, FLORIDA; THENCE RUN THE FOLLOWING ALONG THE CURVE OF SAID ROAD RIGHT-OF-WAY NORTHEASTERLY HAVING A RADIUS OF 50.00 FEET, A CENTRAL ANGLE OF 103°37'21", SUBTENDED BY A CHORD BEARING AND DISTANCE OF NORTH 02°57'30" EAST, 78.60 FEET AND AN ARC DISTANCE OF 90.43 FEET TO A POINT OF REVERSE CURVATURE; THENCE RUN NORTHWESTERLY ALONG THE CURVE HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 35°55'34",

SUBTENDED BY A CHORD BEARING AND DISTANCE OF NORTH 30°53'23" WEST, 15.42 FEET AND AN ARC DISTANCE OF 15.68 FEET TO THE POINT OF TANGENCY; THENCE RUN NORTH 12°55'36" WEST, A DISTANCE OF 162.29 FEET; THENCE RUN NORTH 23°57'43" WEST, A DISTANCE OF 156.93 TO A POINT OF CURVATURE; THENCE RUN NORTHEASTERLY ALONG THE CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 93°19'19", SUBTENDED BY A CHORD BEARING AND DISTANCE OF NORTH 22°41'56" EAST, 36.37 FEET AND AN ARC DISTANCE OF 40.72 FEET TO A POINT OF TANGENCY AND THE NORTH LINE OF THE AFOREMENTIONED TRACT 2, SAID LINE ALSO BEING THE SOUTH RIGHT-OF-WAY LINE OF THE "MAIN CANAL" INDIAN RIVER FARMS WATER CONTROL DISTRICT 300 FOOT WIDE RIGHT-OF-WAY, RECORDED IN DEED BOOK 48, PAGE 23, PUBLIC RECORDS OF ST. LUCIE COUNTY, FLORIDA; THENCE RUN NORTH 69°21'36" EAST ALONG SAID NORTH LINE OF TRACT 2 AND SOUTH RIGHT-OF-WAY LINE OF "MAIN CANAL", A DISTANCE OF 81.91 FEET; THENCE RUN NORTH 89°51'39" EAST ALONG SAID NORTH LINE OF TRACT 2, A DISTANCE OF 295.62 FEET TO THE POINT OF BEGINNING. CONTAINING: 200,228.97 S.F. OR 4.60 ACRES

The parties intended the legal description to read as follows:

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ROADWAY PLAT" AS RECORDED IN PLAT BOOK 16, PAGES 63 THROUGH 63A OF THE PUBLIC RECORDS OF INDIAN RIVER COUNTY, FLORIDA; THENCE RUN THE FOLLOWING ALONG THE CURVE OF SAID ROAD RIGHT-OF-WAY NORTHEASTERLY HAVING A RADIUS OF 50.00 FEET, A CENTRAL ANGLE OF 103°37'21", SUBTENDED BY A CHORD BEARING AND DISTANCE OF NORTH 02°57'30" EAST, 78.60 FEET AND AN ARC DISTANCE OF 90.43 FEET TO A POINT OF REVERSE CURVATURE; THENCE RUN NORTHWESTERLY ALONG THE CURVE HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 35°55'34", SUBTENDED BY A CHORD BEARING AND DISTANCE OF NORTH 03°53'23" WEST, 15.42 FEET AND AN ARC DISTANCE OF 15.68 FEET TO THE POINT OF TANGENCY; THENCE RUN NORTH 12°55'36" WEST, A DISTANCE OF 162.29 FEET; THENCE RUN NORTH 23°57'43" WEST, A DISTANCE OF 156.93 TO A POINT OF CURVATURE; THENCE RUN NORTHEASTERLY ALONG THE CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 93°19'19", SUBTENDED BY A CHORD BEARING AND DISTANCE OF NORTH 22°41'56" EAST, 36.37 FEET AND AN ARC DISTANCE OF 40.72 FEET TO A POINT OF TANGENCY AND THE NORTH LINE OF THE AFOREMENTIONED TRACT 2, SAID LINE ALSO BEING THE SOUTH RIGHT-OF-WAY LINE OF THE "MAIN CANAL" INDIAN RIVER FARMS WATER CONTROL DISTRICT 300 FOOT WIDE RIGHT-OF-WAY, RECORDED IN DEED BOOK 48, PAGE 23, PUBLIC RECORDS OF ST. LUCIE COUNTY, FLORIDA; THENCE RUN NORTH 69°21'36" EAST ALONG SAID NORTH LINE OF TRACT 2 AND SOUTH RIGHT-OF-WAY LINE OF "MAIN CANAL", A DISTANCE OF 81.91 FEET; THENCE RUN NORTH 89°51'39" EAST ALONG SAID NORTH LINE OF TRACT 2, A DISTANCE OF 295.62 FEET TO THE POINT OF BEGINNING. CONTAINING: 200,228.97 S.F. OR 4.60 ACRES

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 November 8, at Vero Beach, Indian River County, Florida.

eSigned by Judge Cynthia L. Cox 11/08/2024 10:47 am

CYNTHIA L. COX, Circuit Judge

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

Mehwish Yousuf, Esq./O Quintairos, Prieto, Wood & Boyer, P.A.
Attorney for Plaintiff 2400 E. Commercial Blvd., Ste. 520 Fort Lauderdale, FL 33308
servicecopies@qpwblaw.com; mehwish.yousuf@qpwblaw.com

COUNSEL FOR PLAINTIFF SHALL IMMEDIATELY SERVE A COPY OF THIS ORDER ON ALL PARTIES WITHOUT AN EMAIL ADDRESS AND FILE A CERTIFICATE OF SERVICE IN THE COURT FILE.

**Jerry Kevin and Vanessa Bynum, 22200 SR 60, Vero Beach, FL 32966
USA Dept Treasury, 99 NE 4th Street, Miami, FL 33132
Banack Terrace HOA, 2415 N. Monroe Street, Suite 810, Tallahassee, FL 32303**