

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

CASE NO. 31-2017-CC-00-1242

**OYSTER BAY/POINTE CONDOMINIUM
ASSOCIATION, INC., F/K/A OYSTER
POINTE RESORT CONDOMINIUM
ASSOCIATION, INC., a Florida
corporation,**

Plaintiff,

vs.

**MARK KENDALL MACKEY,
GEORGIA S. BERGER and
MAYNARD E. BERGER, her husband,
MARY JOANNE HENDERSON, TRUSTEE
OF THE MARY JOANNE HENDERSON TRUST,
DEAN CAPPETTA and LISA CAPPETTA, his wife,
GEORGE T. ABOOD, and
WAYNE A. FRANCIS,**

Defendants.

FINAL JUDGMENT OF FORECLOSURE
(Form Approved by 19th Circuit Administrative Order 2010-08)

Note: This final judgment format may only be modified by adding language in sequentially numbered paragraphs beginning with paragraph 11. Attorneys may be sanctioned for submitting a final judgment which improperly varies the approved format.

This action was heard before the court on the plaintiff's Motion for Final Judgment. On the evidence presented;

IT IS ADJUDGED that:

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

2. **Amounts Due.** Plaintiff, **OYSTER BAY/POINTE CONDOMINIUM ASSOCIATION, INC., F/K/A OYSTER POINTE RESORT CONDOMINIUM ASSOCIATION, INC., a Florida corporation, 1570 U.S. 1, Sebastian, FL 32958,** is due:

FILED FOR RECORD
PROBATE/IN PROBATE
CIRCUIT COURT
2018 JAN 19 PM 3:33
JEFFREY R. SMITH
CLERK OF CIRCUIT COURT
INDIAN RIVER COUNTY, FL

AS TO DEFENDANT, MARK KENDALL MACKEY:

Principal		\$474.89
Per diem interest at 18% from February 1, 2015 to December 31, 2017 (per diem .23)		244.72
Title search expense		.....
Taxes		.....
Insurance premiums		
Attorneys' fees		475.00
Finding as to reasonable number of hours:	3	
Finding as to reasonable hourly rate:	\$158.33	
Mackey Attorneys' fees total	\$475.00	
Court costs		
Filing fee		92.10
Service of Process at \$40.00 per defendant		40.00
Publication for [reason]		.....
Additional Costs [list separately]		.....
Subtotal AS TO DEFENDANT, MACKEY:		\$1,326.71

AS TO DEFENDANTS, GEORGIA S. BERGER and MAYNARD E. BERGER, her husband:

Principal		\$1,676.27
Per diem interest at 18% from February 1, 2015 to December 31, 2017 (per diem .83)		883.12
Title search expense		.....
Taxes		.....
Insurance premiums		
Attorneys' fees		475.00
Finding as to reasonable number of hours:	3	
Finding as to reasonable hourly rate:	158.33	
Berger Attorneys' fees total	\$475.00	
Court costs		
Filing fee		92.10
Service of Process at \$16.69 per defendant		33.38

Publication for [reason]	.....
Additional Costs [list separately]	.....
Subtotal as to AS TO DEFENDANTS, BERGER:	\$3,159.87

AS TO DEFENDANTS, DEAN CAPPETTA and LISA CAPPETTA, his wife:

Principal		\$1,370.17
Per diem interest at 18% from February 1, 2015 to December 31, 2017 (per diem .68)		723.52
Title search expense		.....
Taxes		.....
Insurance premiums		.....
Attorneys' fees		475.00
Finding as to reasonable number of hours:	3	
Finding as to reasonable hourly rate:	158.33	
Cappetta Attorneys' fees total	\$475.00	
Court costs		
Filing fee		92.10
Service of Process at \$40.00 per defendant		80.00
Publication for service of process		85.00
Additional Costs [list separately]		.....

Subtotal as to AS TO DEFENDANTS, CAPPETTA: \$2,825.79

AS TO DEFENDANT, GEORGE T. ABOOD:

Principal		\$474.89
Per diem interest at 18% from February 1, 2015 to December 31, 2017 (per diem .23)		244.72
Title search expense		.....
Taxes		.....
Insurance premiums		.....
Attorneys' fees		475.00
Finding as to reasonable number of hours:	3	
Finding as to reasonable hourly rate:	158.33	
Abood Attorneys' fees total	\$475.00	
Court costs		
Filing fee		92.10

Service of Process at \$40.00 per defendant	40.00
Publication for service of process	85.00
Additional Costs [list separately]	.....
Subtotal as to AS TO DEFENDANT, ABOOD:	\$1,411.71

AS TO DEFENDANT, WAYNE A. FRANCIS:

Principal	\$474.89
Per diem interest at 18% from February 1, 2015 to December 31, 2017 (per diem .23)	244.72
Title search expense	.....
Taxes	.....
Insurance premiums	.....
Attorneys' fees	475.00
Finding as to reasonable number of hours:	3
Finding as to reasonable hourly rate:	\$158.33
Francis Attorneys' fees total	\$475.00
Court costs	
Filing fee	92.10
Service of Process at \$16.69 per defendant	16.69
Publication for [reason]	.....
Additional Costs [list separately]	.....
Subtotal AS TO DEFENDANT, FRANCIS:	\$1,303.40¹

LESS: Escrow balance	.....
LESS: Unearned insurance premiums	.....
LESS: Other [describe]	.....

TOTAL	\$10,027.48
--------------	--------------------

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

¹ See Paragraph 11 hereinbelow with regard to Defendant, Francis.

4. **Lien on Property.** Plaintiff holds a lien for the total sum superior to all claims or estates of defendant(s), on the following described property in **Indian River** County, Florida:

AS TO DEFENDANT, MARK KENDALL MACKEY:

Unit Week(s) No(s). 51 in Condominium No. 108 of Oyster Pointe Resort, a Condominium, according to the Declaration of Condominium thereof, as recorded in Official Records Book 643 at Page 0113 in the Public Records of Indian River County, Florida and all amendments thereto, if any.

AS TO DEFENDANTS, GEORGIA S. BERGER and MAYNARD E. BERGER, her husband:

Unit Week(s) No(s). 27 in Condominium No. 203 of Oyster Pointe Resort, a Condominium, according to the Declaration of Condominium thereof, as recorded in Official Records Book 643 at Page 0113 in the Public Records of Indian River County, Florida and all amendments thereto, if any.

AS TO DEFENDANTS, DEAN CAPPETTA and LISA CAPPETTA, his wife:

Unit Week(s) No(s). 17 in Condominium No. 208 of Oyster Pointe Resort, a Condominium, according to the Declaration of Condominium thereof, as recorded in Official Records Book 643 at Page 0113 in the Public Records of Indian River County, Florida and all amendments thereto, if any.

AS TO DEFENDANT, GEORGE T. ABOOD:

Unit Week(s) No(s). 52 in Condominium No. 210 of Oyster Pointe Resort, a Condominium, according to the Declaration of Condominium thereof, as recorded in Official Records Book 643 at Page 0113 in the Public Records of Indian River County, Florida and all amendments thereto, if any.

AS TO DEFENDANT, WAYNE A. FRANCIS:

Unit Week(s) No(s). 17 in Condominium No. 212 of Oyster Pointe Resort, a Condominium, according to the Declaration of Condominium thereof, as recorded in Official Records Book 643 at Page 0113 in the Public Records of Indian River County, Florida and all amendments thereto, if any.

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 shall sell the property at public sale on MARCH 1, 2018, to the highest bidder for cash, except as prescribed in paragraph 6,:

 X by electronic sale at www.indian-river.realforeclose.com beginning at 10:00 A.M.

in accordance with section 45.031, Florida Statutes The public sale shall not be postponed or canceled without a court order, and shall proceed regardless of whether plaintiff, a plaintiff's representative, or plaintiff's counsel is present. All orders postponing or canceling the sale must be filed with the clerk of court no later than 5:00 p.m. two business days before the sale date. Counsel for plaintiff must be certain that the clerk has the

original proof of publication of the notice of sale on file no less than three business days before the sale date. Failure to file the original proof of publication of the notice of sale will not stop the sale, however the certificate of sale will not issue until the original proof of publication of notice of sale is filed. The failure of plaintiff's counsel to 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. If the original proof of publication of the notice of sale is not filed with the clerk within ten calendar days after the sale, an order will be entered directing the plaintiff to show cause why the sale should not be vacated and the case dismissed with or without prejudice. The fact that an attorney has a high volume practice will not be a showing of good cause.

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.

6. **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, the clerk shall credit plaintiff's bid with the total sum with 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.

7. **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 2 from this date to the date of the 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 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.

9. **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, subject to the provisions of the "Protecting Tenant At Foreclosure Act of 2009". If any defendant remains in possession of the property, the clerk shall without further order of the court issue forthwith a writ of possession upon request of the person named on the certificate of title.

10. **Jurisdiction Retained.** Jurisdiction of this action is retained to enter further orders that are proper including, without limitation, a deficiency judgment.

11. **Wayne A. Francis** filed bankruptcy and the debt has been discharged. No attempt is being made to pursue collection of this debt against Francis, but only to foreclose the

lien on the subject real and personal property described herein.

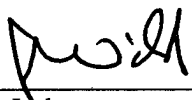
IF THIS PROPERTY IS SOLD AT PUBLIC AUCTION, THERE MAY BE ADDITIONAL MONEY FROM THE SALE AFTER PAYMENT OF PERSONS WHO ARE ENTITLED TO BE PAID FROM THE SALE PROCEEDS PURSUANT TO THE FINAL JUDGMENT.

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 60 DAYS AFTER THE SALE. IF YOU FAIL TO FILE A 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, VERO BEACH FLORIDA 32960 (TELEPHONE: 772-770-5185), CIRCUIT 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, 200 S. INDIAN RIVER DRIVE, SUITE 101, FORT PIERCE, FLORIDA 34950 (TELEPHONE: 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 (NAME OF LOCAL OR NEAREST LEGAL AID OFFICE AND TELEPHONE NUMBER) FOR ASSISTANCE, YOU SHOULD DO SO AS SOON AS POSSIBLE AFTER RECEIPT OF THIS NOTICE.

ORDERED on January 15, 2018.



County Judge

Copies Furnished by U.S. Mail to:

Philip F. Nohrr, Esq.
P.O. Box 1870
Melbourne, FL 32902-1870

MARK KENDALL MACKEY
1128 Bransford Court
Apopka, FL 32712

GEORGIA S. & MAYNARD E. BERGER
21 Crestwood Estates
Vernon, VT 05354

DEAN & LISA CAPPETTA
13986 S. Cypress Cove Drive
Davie, FL 33325

GEORGE T. ABOOD
3480 Funston Circle
Melbourne, FL 32940

WAYNE A. FRANCIS
6 Marshall Street
Massapequa, NY 11758