



IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA

TRUSTMARK NATIONAL BANK

Plaintiff,

v.

KURT N. CYBULSKI

Defendant.

CIVIL ACTION NO.:

CV-2015-901029



20161114000418800 1/5 \$28.00
Shelby Cnty Judge of Probate, AL
11/14/2016 01:11:50 PM FILED/CERT

FINAL JUDGMENT

This Court, having reviewed and taken notice of the pleadings herein, and noting that Defendant, Kurt N. Cybulski (hereinafter "Defendant") was duly and properly served with Plaintiff Trustmark National Bank's (hereinafter "Trustmark") Complaint filed in the above styled action and has failed to plead or otherwise defend the allegations against him, and Defendant is thus in default, and finding that Trustmark is entitled to the relief set forth in its complaint, hereby enters judgment as follows:

1. This Court has jurisdiction over the parties hereto and the subject matter hereof, and venue in this Court is appropriate, because this action affects title to real estate situated within Shelby County, Alabama, described as a parcel of real property with a reported physical address of 530 Waterford Lake Circle, Calera, Alabama 35040 and more particularly described as:

Lot 821AA according to a Resurvey of a Resurvey of Lots 819A thru 824A, of Waterford Townhomes, Sector 1 - Phase 1, as recorded in Map Book 36, Page 9, in the Probate Office of Shelby County, Alabama.

(hereinafter the "Subject Property").

2. Trustmark is qualified to do business in Alabama and lawfully conducts business in Shelby County, Alabama.

3. Upon information and belief, Defendant is an adult resident living in Atlanta, Georgia but owning real property in Shelby County, Alabama.

4. Defendant was served with Trustmark's complaint on August 31, 2016.

5. Defendant is not a minor or incompetent person. There is no information to suggest that Defendant maintains an "Active Duty Status" in any military service.

6. Defendant has failed to respond to Plaintiff's complaint.

7. On August 30, 2005, Adam J. Nelson executed a promissory note to Mortgage Professionals, Inc. in the amount of One Hundred Four Thousand Two Hundred Fourteen and no/100 Dollars (\$104,214.00). The note was later endorsed to Trustmark National Bank. In order to secure said note Adam J. Nelson and Amy E. Nelson, husband and wife, executed and delivered to Mortgage Professionals, Inc. a mortgage on real property described as:

Lot 821A, according to the Survey of Waterford Townhomes, Sector 1, Phase 1, as recorded in Map Book 35, Page 107, in the Probate Office of Shelby County, Alabama.

Which has a physical address of 530 Waterford Lake Circle Calera Alabama 35040. Said mortgage was recorded September 16, 2005 at Instrument Number 20050916000482910 in the Office of the Judge of Probate of Shelby County, Alabama, later said mortgage was assigned to Trustmark National Bank by instrument recorded at Instrument Number 20050916000482920 in the Office of the Judge of Probate Shelby County, Alabama (hereinafter "Trustmark Mortgage").

8. The terms and conditions of the note and mortgage became in default and Trustmark as holder did declare all of the indebtedness secured by said mortgage due and payable and said mortgage subject to foreclosure as therein provided and did give notice of the

foreclosure of said mortgage in accordance with the terms thereof by U.S. Mail and by publication in the Shelby County Reporter a newspaper published in Shelby County, Alabama in issues of January 7, 2015, January 14, 2015 and January 21, 2015 and again on February 11, 2015.

9. On March 11, 2015 the foreclosure sale was duly held between the legal hours of sale and Trustmark tendered the highest and best bid for the real property.

10. On March 11, 2015, title to the above described property was conveyed to Trustmark via foreclosure deed. Said foreclosure deed being recorded at Instrument Number 20150311000075530 on March 11, 2015 in the Shelby County, Alabama Judge of Probate's Office (hereinafter "Foreclosure Deed").

11. Thereafter Trustmark discovered that a Resurvey of a Resurvey of Lots 819A thru 824A Waterford Townhomes Sector 1 Phase 1 caused lot lines of the Subject Property to be moved. The resurvey resulted in a portion of their adjoining Lot 822A to become the new 821AA (Subject Property).

12. Lot 821AA was created by gaining a portion of Lot 822A which Defendant owns.

13. Even though all owners, including defendant, and lenders joined in the execution of the Resurvey not corrective deeds, partial releases or property surveys were done.

14. The Resurvey of a Resurvey of Lots 819A thru 824A of Waterford Townhomes Sector 1 Phase 1 was recorded in the Judge of Probate records of Shelby County, Alabama on November 3, 2005 at Map Book 36, Page 9. All owners of Lots 819A thru 824A signed the Resurvey of a Resurvey of Lots 819A thru 824A.

15. Trustmark brought this action seeking an order reforming the legal description of Trustmark's Mortgage and Foreclosure Deed to reflect the legal description of Lot 821AA.

16. In addition Trustmark seeks an order releasing Defendant's interest in the portion of the real property which was Lot 822A and which is now part of Lot 821AA described as:

Lot 821AA according to a Resurvey of a Resurvey of Lots 819A thru 824A, of Waterford Townhomes, Sector 1 – Phase 1, as recorded in Map Book 36, Page 9, in the Probate Office of Shelby County, Alabama.

17. The legal description of the Subject Property changed by virtue of a Resurvey of Lots 813A thru 824A of Waterford Townhomes Section 1.

18. It was the intent of the parties to the mortgage that Trustmark would have an interest in the real property located at 530 Waterford Lake Circle, Calera, Alabama 35040.

19. The legal description used in Trustmark's mortgage was the legal description pertaining to Lot 821A of Waterford Townhomes prior to the resurvey.

20. The legal description contained in Trustmark's ~~foreclosure~~ deed also contained the legal description pertaining to Lot 821A of Waterford Homes.

21. Ala. Code § 6-6-221 (1975) provides in pertinent part, that a declaratory judgment's "purpose is to settle and to afford relief from uncertainty and insecurity with respects to rights, status, and other legal relations and is to be liberally construed and administered." Ala. Code § 6-6-211 (1975). A court with jurisdiction over a declaratory judgment has the power to declare rights, status, and other legal relations involving a written contract or other writings constituting a contract. Ala. Code § 6-6-223 (1975); *City Council of Prichard v. Cooper*, 358 So. 2d 440 (Ala. 1978); *Dukes v. Pearson*, 794 So. 2d 1183 (Ala. Civ. App. 2001). Declaratory judgment is proper with declaring rights, status and legal relations and the Court may grant further relief based on a declaratory judgment whenever such relief is necessary or proper. Ala. Code § 6-6-230 (1975); See also *Horn v. Dunn Bros.*, 79 So. 2d 11 (Ala. 1955).



WHEREFORE, this Court enters a judgment in favor of Trustmark and against Defendant on Trustmark's Complaint and hereby ORDERS, ADJUDGES AND DECREES as follows:


(A) The legal descriptions in Trustmark's Mortgage and Foreclosure Deed are reformed to include the following legal description:

Lot 821AA according to a Resurvey of a Resurvey of Lots 819A thru 824A, of Waterford Townhomes, Sector 1 - Phase 1, as recorded in Map Book 36, Page 9, in the Probate Office of Shelby County, Alabama;

(B) Any title claim and/or interest that Defendant Kurt N. Cybulski has in Lot 821AA of Waterford Townhomes Sector 1, Phase 1 which is the Subject Property is hereby released;

(C) Trustmark has all right title and interest in and to the Subject Property superior to all rights title and interest claimed by Kurt N. Cybulski;

(D) Cost are taxed as paid.

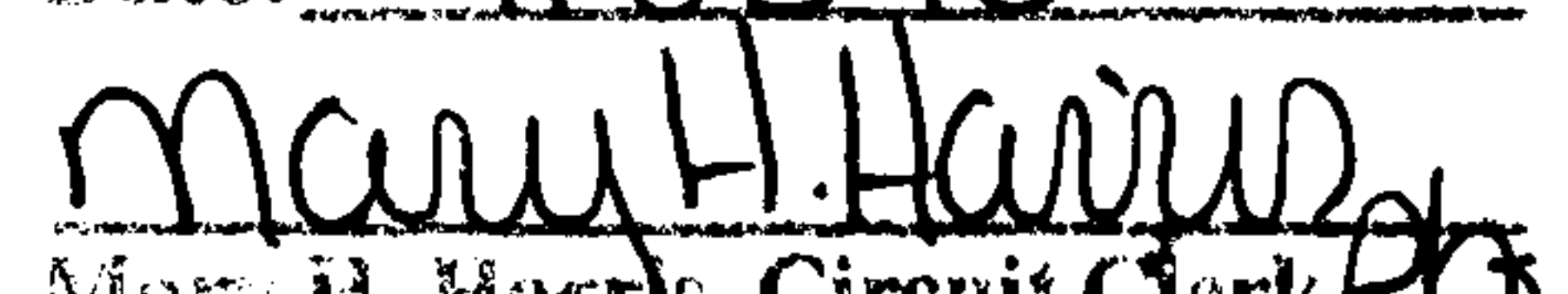

20161114000418800 5/5 \$28.00
Shelby Cnty Judge of Probate, AL
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DONE this the 26 day of October, 2016.


CIRCUIT COURT JUDGE

Certified a true and correct copy

Date: 11-02-16


Mary H. Harris, Circuit Clerk
Shelby County, Alabama