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4/4/2018 10:47 AM  
58-CV-2017-900685.00  
CIRCUIT COURT OF  
SHELBY COUNTY, ALABAMA  
MARY HARRIS, CLERK

**IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA**

**TRUSTMARK NATIONAL BANK,**

**Plaintiff,**

**v.**

**COLONIAL BANK; BUCK CREEK  
CONSTRUCTION, INC. AND NYOKA N.  
DEAN**

**Defendants.**

**CASE NO.:**

**CV-2017-900685.00**

**DECLARATORY JUDGMENT**


The above styled matter came before the Court on a hearing on Trustmark National Bank's (hereinafter "Plaintiff"), Motion for Entry of Default Judgment against Defendants Colonial Bank and Buck Creek Construction, Inc. Paul K. Lavelle appeared on behalf of Plaintiff. Defendants Colonial Bank and Buck Creek Construction, Inc. did not appear at the hearing. Based upon the Plaintiff's representations at the hearing, Plaintiff's Motion for Entry of Default Judgment and the pleadings filed in this case this Court finds:

1. Defendants Colonial Bank and Buck Creek Construction, Inc. were both served via publication on January 17, 2018. More than thirty (30) days have expired since the date of service and Defendants have failed to file an answer to Plaintiff's Complaint.

2. This action involves real property located in Shelby County Alabama at 512 Park Village Lane Alabaster, Alabama 35007 and further described as:

Lot 29, according to the Final Plat Park Forest Village, as recorded in Map Book 31, Page 51, in the Probate Office of Shelby County, Alabama.

Parcel Id No: 23-7-26-0-001-007.047

  
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Shelby Cnty Judge of Probate, AL  
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The above described real property is hereinafter referred to as "Subject Real Property".

3. On August 6, 2003, Buck Creek Construction, Inc. as mortgagor executed and delivered to Colonial Bank a mortgage on the Subject Real Property in the original amount of \$93,750.00 which was recorded September 10, 2003 in the Office of the Judge of Probate Shelby County, Alabama at Instrument No. 20030910000609440 (hereinafter "Colonial's Mortgage").

4. On February 18, 2004, Buck Creek Construction, Inc. conveyed via warranty deed the Subject Real Property to Nyoka N. Dean. Said warranty deed was recorded in the Office of the Judge of Probate Shelby County, Alabama on February 25, 2004 at Instrument No. 20040225000095840. In the Warranty Deed Buck Creek Construction, Inc. warranted that it was lawfully seized in fee simple of the Subject Real Property and that the Subject Real Property was free from all encumbrances.

5. On February 18, 2004 Nyoka N. Dean obtained a loan in the amount of \$126,737.00 and as security for said loan executed and delivered a mortgage on the Subject Real Property to Mortgage Professionals, Inc. in the original amount of \$126,737.00. Said mortgage was recorded February 25, 2004 in the Office of the Judge of Probate Shelby County, Alabama at Instrument No. 20040225000096850 (hereinafter "Plaintiff's Mortgage").

6. On February 18, 2004, Plaintiff's mortgage was assigned to Trustmark National Bank. The assignment of mortgage was recorded February 25, 2004 in the Office of the Judge of Probate Shelby County, Alabama at Instrument No. 20040225000095860.

7. Colonial's Mortgage is still outstanding of record having not been satisfied or released.



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8. Colonial's Mortgage was paid with the proceeds of the Plaintiff's Mortgage, without actual notice of any potential title defects. Accordingly, Plaintiff is entitled to an equitable assignment of the senior mortgagee under the rule of law set forth in Brooks v. Resolution Title Corp., 599 So. 2d 1163, 65 (Ala. 1992).

9. Plaintiff is entitled in equity to be treated as the senior mortgage holder and to have Plaintiff's mortgage enforced for the benefit of Plaintiff.

It is hereby ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion is granted and pursuant to Rule 54(b), the Court specifically finds that there is no just reason for delay and specifically directs the immediate entry of judgment by default for Plaintiff and against Defendants Colonial Bank and Buck Creek Construction, Inc. for the following:

A. Plaintiff is entitled to be the senior mortgage holder superior to all other liens or encumbrances.

B. Colonial's Mortgage lien is hereby satisfied of record and shall no longer have any force or effect as to the Subject Real Property

C. That Plaintiff's Mortgage shall have a first priority position among any liens or encumbrances on the Subject Real Property.

D. Costs incurred herein are taxed as paid.

Done this 3rd day of April, 2018 **Certified a true and correct copy**  
Date: 05/18/18

Mary H. Harris  
Mary H. Harris, Circuit Clerk  
Shelby County, Alabama

/s/ Tom  
CIRCUIT COURT JUDGE

