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58-CV-2024-900462.00
CIRCUIT COURT OF
SHELBY COUNTY, ALABAMA
MARY HARRIS, CLERK

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

U.S. BANK NATIONAL ASSOCIATION,)
AS TRUSTEE, SUCCESSOR IN INTEREST)
TO BANK OF AMERICA, NATIONAL)
ASSOCIATION, AS TRUSTEE, SUCCESSOR)
BY MERGER TO LASALLE NATIONAL BANK,)
AS TRUSTEE FOR GSAMP TRUST 2005-)
HE6, MORTGAGE PASS-THROUGH)
CERTIFICATES, SERIES 2005-HE6,)
)
Plaintiff,)
v.)
)
MARY B. MACK,)
)
Defendant.)

Case No: CV 2024-900462

ORDER ON SUMMARY JUDGMENT

This matter came before the Court on January 7, 2025 on Plaintiff 1611 Ridge Road's ("Ridge Rd") motion for summary judgment ("Ridge Rd's Motion) and Defendant Mary B. Mack's ("Mack") motion to dismiss ("Mack's Motion"). (Docs. 61 and 64, respectively). At the January 7, 2025 hearing, the Court heard oral argument from Mack, appearing *pro se*, and from counsel for both Ridge Rd and Plaintiff US Bank National Association, as Successor Trustee, to Bank of America, National Association, Successor by Merger to LaSalle National Association, as Trustee for GSAMP Trust 2005-HE6, Mortgage Pass-Through Certificates Series 2005-HE6 ("US Bank"). Having reviewed and considered the parties' submissions and arguments, as well as the record, it is hereby ORDERED, ADJUDGED and DECREED as follows:

On November 13, 2024, Ridge Rd its motion seeking entry of summary judgment declaring it to be the owner of the Property and ejecting Mack therefrom. Ridge Rd

Certified a true and correct copy
Date: 03/03/25
Mary H. Harris JW
Mary H. Harris, Circuit Clerk
Shelby County, Alabama

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presented this Court with the following narrative summary of what it contended to be the undisputed material facts, supported by admissible evidence in the form of sworn testimony and authenticated documents:

1. The real property that is the subject of this case has Shelby County Parcel Identification #13-4-20-1-002-028.000, a street address of 773 Old Cahaba Drive, Helena, AL 35080, and is more particularly described as:

Lot 637, according to the Map or Survey of Old Cahaba, Westchester Sector – Phase II, as recorded in Map Book 24, Page 68, in the Probate Office of Shelby County, Alabama (the “Property”).

2. On September 22, 2005, Gregory Billings and Mack conveyed the Property to Mack pursuant to a warranty deed that was recorded in the Office of the Judge of Probate of Shelby County, Alabama (the “Probate Office”) on September 29, 2005 in Instrument 20050929000507800.

3. On September 22, 2005, Mack executed a mortgage (the “Mortgage”) and note (the “Note”) on the Property to Mortgage Electronic Registration Systems, Inc. (“MERS”), its successors and assigns.

4. The Mortgage was recorded in the Probate Office on September 29, 2005 in Instrument 20050929000507810.

5. On April 24, 2009, MERS assigned the Mortgage to LaSalle Bank National Association, as Trustee for the Registered Holders of GSAMP Trust 2005-HE6, Mortgage Pass-Through Certificates, Series 2005-HE6 (“LaSalle”), which assignment was recorded in the Probate Office on July 20, 2009 in Instrument 20090720000278080.

6. On September 17, 2013, LaSalle assigned the mortgage to US Bank, National Association, as Trustee for GSAMP Trust 2005-HE6, Mortgage Pass-Through

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Certificates, Series 2005 HE6, which assignment was recorded in the Probate Office on November 12, 2013 in Instrument 20131112000443740 (the "2013 Assignment").

7. On July 18, 2018, Bank of America, National Association as Successor by merger to LaSalle Bank National Association, as Trustee for the Registered Holders of GSAMP Trust 2005-HE6, Mortgage Pass-Through Certificates Series 2005-HE6 assigned the Mortgage to U.S Bank, which assignment was recorded in the Probate Office on July 26, 2018 in Instrument 20180726000266720 (the "Corrective Assignment").

8. The Corrective Assignment provides "THE PURPOSE OF THIS CORRECTIVE ASSIGNMENT OF MORTGAGE IS TO CORRECT THE ASSIGNEE ON THE ASSIGNMENT RECORDED ON 11/12/2013 AS INSTRUMENT NUMBER 20131112000443740."

9. The Corrective Assignment corrected the assignee on the 2013 Assignment.

10. Effective June 1, 2019, PHH Mortgage Services ("PHH") became the servicer for Mack's mortgage account, including the collecting of Mack's mortgage payments.

11. Mack defaulted under the terms and conditions of the Mortgage due and payable for February 1, 2019 forward.

12. Verification of the debt was directly provided to Mack by correspondence dated June 30, 2022, October 20, 2022, November 14, 2022, January 26, 2023, and March 11, 2024.

13. US Bank, by its servicer PHH, was the holder of the Note and/or assignee of the Mortgage entitled to enforce the terms and conditions of the Mortgage, including

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the power of sale.

14. PHH and its vendors, including NewRez and/or Altisource, assisted in servicing of the loan on behalf of US Bank, the mortgagee.

15. By correspondence dated January 24, 2024, Mack was provided further verification of the debt and acceleration, along with notice of the foreclosure sale due to her default.

16. Notice of the foreclosure sale was published by publication in the *Shelby County Reporter*, a newspaper of general circulation published in Shelby County, Alabama, in its issues dated February 4, 2024, February 11, 2024, and February 18, 2024.

17. The foreclosure sale was held on March 15, 2024.

18. US Bank was the highest bidder and best bidder at the foreclosure sale and was issued a foreclosure deed dated March 15, 2024, which deed was recorded in the Probate Office in Instrument 20240318000073870 on March 18, 2023.

19. On April 5, 2024, US Bank served Mack and any and all occupants of the Property a notice to vacate.

20. On August 13, 2024, Ridge Rd purchased the Property from US Bank, and the deed was recorded in the Probate Office on September 20, 2024 in Instrument 20240920000293280.

Mack filed a responsive pleading to Ridge Rd's Motion in which she asked the Court to allow her adequate time before scheduling a hearing on Ridge Rd's Motion so that Mack could properly respond. (Doc. 62). The Court set the hearing on Ridge Rd's Motion for January 7, 2025, and Mack did not assert she needed additional time to respond at that hearing. As a result, having construed Mack's filing as a Rule 56(f), Ala.

R. Civ. P., motion, this Court finds such motion to be moot.

In Mack's motion, she submitted a narrative entitled "relevant background and procedural history" (the "Narrative") and cited numerous exhibits attached to her pleading. Mack did not support the Narrative with admissible evidence in the form of sworn testimony or authenticated documents (except for the documents that have been recorded in the Probate Office). Mack did not submit any evidence that would demonstrate or create a dispute of the material facts set forth in Ridge Rd's Motion sufficient to preclude entry of summary judgment in favor of Ridge Rd.

Mack's argument in her motion consisted of one paragraph in which she claimed US Bank was not the "real owner of the property", did not "have standing", and had "no legal interest in the Property. (Doc. 64 at §IV). Mack also made this argument orally at the January 7, 2025 hearing, at which she claimed that US Bank could not eject her from the Property because US Bank did not own (and never owned) the Property. Specifically, Mack claims that the Corrective Assignment of the Mortgage was void or invalid, rendering the foreclosure sale void and resulting in neither US Bank nor Ridge Rd ever taking title to the Property.

Mack already raised and litigated her claim that the Corrective Assignment was invalid in the Circuit Court of Shelby County, Alabama, Civil Action No. 2023-000031, which case was assigned to the Honorable Jonathan A. Spann (the "Mack Lawsuit"). In the Mack Lawsuit, Mack claimed the Corrective Assignment was void. Mack named Newrez c/o PHH Mortgage Services f/d/b/a Ocwen Loan Servicing ("Ocwen") as the defendant in the action.

In Ridge Rd's Motion, Ridge Rd notified this Court of the Mack Lawsuit and

attached the relevant pleadings in the case thereto. Mack also referred to the Mack Lawsuit during oral argument on January 7, 2025. Accordingly, this Court takes judicial notice of the proceedings that took place in the Mack Lawsuit. *Butler v. Olshan*, 191 So. 2d 7, 13 (Ala. 1966) (“With respect to judicial notice by a court of its own records, the rule in Alabama is not that in all cases the court may notice the record of other proceedings therein, even between the same parties and involving the same subject matter: but, where a party refers to such other proceeding or judgment in his pleading for any purpose, the court, on demurrer by the other party, may and should take judicial notice of the entire proceeding in so far as it is relevant to the question of law presented.”).

Oewen filed a motion to dismiss the Mack Lawsuit on the grounds Mack had no authority to challenge the assignment in the Corrective Assignment because she was not a party to that agreement. On March 9, 2022, after conducting a hearing on Oewen’s motion, the trial court granted Oewen’s motion and dismissed the Mack Lawsuit with prejudice.

On April 8, 2023, Mack filed a notice of appeal with the Alabama Court of Civil Appeals. The Alabama Court of Civil Appeals transferred the appeal to the Supreme Court of Alabama. On October 13, 2023, the Supreme Court of Alabama affirmed the dismissal of the Mack Lawsuit with no opinion.

Mack again argues the Corrective Assignment was invalid in defense to the ejectment action. (Doc. 64 at ¶ 11, §§ IV and V). Mack’s claim that the Corrective Assignment, to which she was not and still is not a party, is barred because (1) judgment was previously entered on the merits of that claim, (2) by a court of competent

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jurisdiction, (3) there is substantial identity of parties (US Bank's, and subsequently Ridge Rd's, title vests from the foreclosure sale), and (4) the legal theories and claims advanced by Mack in both lawsuits arise from the same nucleus of facts, e.g. whether the Corrective Assignment was valid such that the foreclosure sale was valid. *See, e.g., A.C.B. v. A.B.B.*, 374 So. 3d 725, 734-737 (Ala. Civ. App. 2022). In addition, this Court also finds that Mack, who was not a party to the Corrective Assignment (or to any assignments of the Mortgage), does not have a right to challenge the assignment or challenge the foreclosure sale on the grounds that such assignment of the Mortgage was invalid. *Johnson v. Beard*, 9 So. 535, 536 (Ala. 1891).

This an ejectment action brought pursuant to Ala. Code § 6-6-280(b), which provides “the complaint [in an ejectment action] is sufficient if it alleges that the plaintiff . . . has the legal title [to the property], properly designating or describing [the property], and that the defendant entered thereupon and unlawfully withholds and detains the same.” Ala. Code § 6-6-280(b) (1975).

The Court finds that Mack failed to raise a dispute of material fact as to any of the following facts:

- Mack executed the Mortgage in 2005 and defaulted on her payments under the terms and conditions of the Mortgage for February 1, 2019 forward;
- US Bank, by its servicer PHH, was the holder of the Note and the assignee of the Mortgage, including the power of sale, and PHH and its vendors, including NewRez and/or Altisource, assisted in servicing the loan on behalf of US Bank;
- Mack was provided additional verification of the debt and acceleration, along

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with notice of the foreclosure sale due to her default by correspondence dated January 24, 2024;

- notice of the foreclosure sale was properly published;
- US Bank purchased the Property at the foreclosure sale, which was properly conducted and held on March 15, 2024;
- US Bank served Mack and any and all occupants of the Property a notice to vacate on April 5, 2024;
- US Bank, as the title owner of the Property at the time of the filing of the complaint in this action, was entitled to immediate possession of the Property;
- Ridge Rd became the title owner of the Property and was entitled to immediately possess the Property when it purchased the Property on August 13, 2024; and
- Mack continues to maintain possession of the Property.

These undisputed facts establish Ridge Rd holds legal title to the Property and that Mack unlawfully withholds possession of the Property, entitling Ridge Rd to judgment as a matter of law ejecting Mack therefrom. *Galea v. Sec'y of Veterans Affairs*, 389 So. 3d 1124, 1126-27 (Ala. 2023) (affirming summary judgment to the legal title owner of the property in ejectment action (the "SVA") and the issuance of a writ of possession where the SVA submitted the following evidence with its motion for summary judgment: (i) the vesting deed into the former mortgagors, (ii) the mortgage and promissory note the former mortgagors executed, (iii) documents memorializing the assignment of the mortgage over the years, (iv) the letter notifying the former mortgagors of the foreclosure sale, (v) the publication of the notice of the foreclosure sale, (vi) the

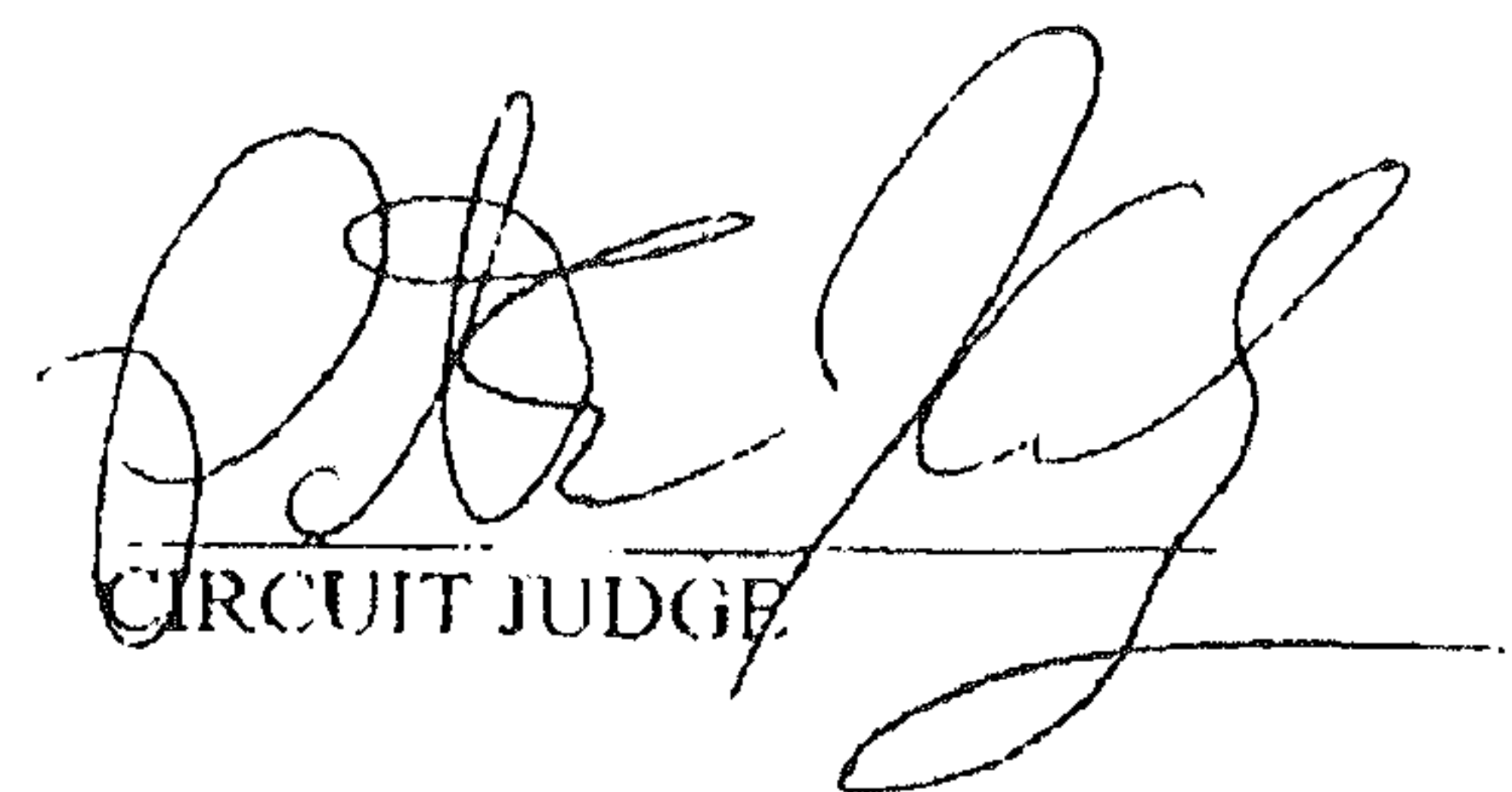
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foreclosure deed, (vii) the deed into SVA, and (viii) the letter demanding that the former mortgagors vacate the property); *see also Powers*, 2024 WL 4246639, at *2 (affirming the trial court's grant of summary judgment to the purchaser of property at the foreclosure sale and ejecting the defendants from the property).

This Court ORDERS, ADJUDGES and DECREES the following: (1) US Bank is dismissed as a party from the lawsuit with prejudice; (2) Ridge Rd's motion for summary judgment is GRANTED; (3) Mack's motion to dismiss is DENIED; (4) any possessory right in the Property claimed by Mack is extinguished; (5) Mack is ejected from the Property; (6) Mack has no right to redeem the Property; (7) Mack has fifteen (15) days to vacate the Property; (8) Ridge Rd is granted exclusive possession of the Property located at 773 Old Cahaba Drive, Helena AL 35080 to the exclusion of Mack; (9) Ridge Rd's motion to dismiss its claims for mesne profits and damages is GRANTED; (10) all other pending motions are denied as MOOT; and (11) all claims in the lawsuit have been disposed.

It is the Court's intent that its entry of this judgment, dismissal of US Bank, and dismissal of Ridge Rd's claims for mesne profits and damages results in a final judgment as to all claims in this matter.

Done this 28th day of January 2025.


CIRCUIT JUDGE



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