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FORMAL ORDER

STATE OF ARKANSAS,)
) SCT.
SUPREME COURT)

**BE IT REMEMBERED, THAT A SESSION OF
THE SUPREME COURT BEGUN AND HELD IN
THE CITY OF LITTLE ROCK, ON SEPTEMBER 14,
2017, AMONGST OTHERS WERE THE FOLLOW-
ING PROCEEDINGS, TO-WIT:**

SUPREME COURT CASE NO. CV-17-628

**MINOR L. MCNEIL AND DEBORAH F. MCNEIL
PETITIONERS**

**V. APPEAL FROM SALINE COUNTY CIRCUIT
COURT – 63CV-15-1013**

**HONORABLE GARY ARNOLD, CIRCUIT JUDGE,
AND U.S. BANK, NATIONAL ASSOCIATION
RESPONDENTS**

**PETITIONERS' PETITION FOR WRIT OF HA-
BEAS CORPUS IS DENIED. MOTION OF JERRY P.
MCNEIL TO APPEAR ON BEHALF OF PETITION-
ERS IS DENIED. WOMACK, J., WOULD GRANT
RESPONDENT'S MOTION FOR LEAVE TO FILE
BELATED RESPONSE IN OPPOSITION TO PE-
TITION FOR WRIT OF HABEAS CORPUS IS
GRANTED.**

TENDERED RESPONSE FILED THIS DATE.

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IN TESTIMONY, THAT THE ABOVE IS A
TRUE COPY OF THE ORDER OF SAID
SUPREME COURT, RENDERED IN THE
CASE HEREIN STATED, I, STACEY PEC-
TOL, CLERK OF SAID SUPREME COURT,
HEREUNTO SET MY HAND AND AFFIX
THE SEAL OF SAID SUPREME COURT,
AT MY OFFICE IN THE CITY OF LITTLE
ROCK, THIS 14TH DAY OF SEPTEMBER,
2017.

/s/ Stacy Pectol
CLERK

By
DEPUTY CLERK

ORIGINAL TO CLERK

CC: MINOR L. MCNEIL
JERRY P. MCNEIL
VINCENT P. FRANCE,
ASSISTANT ATTORNEY GENERAL
SAMUEL S. HIGH
HONORABLE GARY ARNOLD,
CIRCUIT JUDGE

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IN THE CIRCUIT COURT OF
SALINE COUNTY, ARKANSAS
2nd DIVISION

U.S. BANK, NATIONAL ASSOCIATION
PLAINTIFF

VS. NO. 63CV-15-1013-2

DEBORAH F. MCNEIL;
MINOR L. MCNEIL; AND
TENANTS OF 12150 CONGO
FERNDAL ROAD
ALEXANDER, AR (IF ANY) DEFENDANTS

ORDER FOR SUMMARY JUDGMENT
AND DECREE OF FORECLOSURE

(Filed Feb. 6, 2017)

On November 1, 2016, this matter came before the Court on Plaintiffs Motion for Summary Judgment. Plaintiff appeared by and through its attorney, and Defendant appeared, pro se. This Court, being well and sufficiently advised, doth hereby find as follows:

1. Before the Court is Plaintiff's Motion for Summary Judgment, pursuant to Rule 56 of the Arkansas Rules of Civil Procedure.

2. Plaintiff propounded Requests for Admissions to Defendant on March 8, 2016. Defendants failed to respond to the Requests; consequently, the Requests for Admissions are deemed admitted.

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3. There is no genuine dispute as to any material fact herein, and Plaintiff is entitled to judgment as a matter of law, pursuant to Rule 56.

4. Plaintiff, U. S. Bank, National Association, is authorized to do business in the State of Arkansas.

5. The defendants herein are residents of this state, have transacted business in this state, or have an interest in, use, or possess real property in this state.

6. The real property involved herein is located in Saline County, Arkansas.

7. This Court has jurisdiction of the subject matter of and parties to this action.

8. Minor L. McNeil and Deborah F. McNeil, husband and wife, received title by Warranty Deed recorded November 30, 2006, at Book 06, Page 133922 to the following property:

Part of the Southeast Quarter of the Southwest Quarter of Section 35, Township 1 North, Range 15 West, Saline County, Arkansas, more particularly described as follows: Commencing at a rebar found at the Southeast corner of said Southeast Quarter of the Southwest Quarter; thence North 01 degrees 41 minutes 05 seconds East, along the East boundary of said Southeast Quarter of the Southwest Quarter a distance of 651.49 feet; thence North 88 degrees 52 minutes 33 seconds West, a distance of 974.39 feet to a rebar, said point being the point of beginning; thence

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South 01 degrees 58 minutes 15 seconds West, a distance of 104.43 feet to a rebar; thence North 88 degrees 34 minutes 17 seconds West, a distance of 329.67 feet to a point in the center of Congo Road; thence North 01 degrees 38 minutes 06 seconds East, along the center of said road a distance of 199.16 feet; thence leaving said road center, North 80 degrees 52 minutes 05 seconds East, a distance of 317.28 feet to a rebar with Cap Number 1211; thence South 05 degrees 33 minutes 32 seconds West, a distance of 107.99 feet to a rebar with Cap Number 1211; thence South 28 degrees 19 minutes 05 seconds East, a distance of 52.03 feet to the point of beginning.

Tax Parcel No. 001-07163-000

The property is more commonly known as 12150 Congo Ferndale Road, Alexander, AR (the "subject property".) By this conveyance, Deborah F. McNeil and Minor L. McNeil took title to the subject property as tenants by the entirety.

9. On March 2, 2010, Deborah F. McNeil and Minor L. McNeil, husband and wife, executed in favor of and delivered to Metropolitan National Bank a note in the principal amount of \$175,000.00, with principal and interest payable as set forth therein. The note was subsequently endorsed in blank, and is currently held by Plaintiff herein.

10. Contemporaneously with the execution of the note and to secure its payment, Deborah F. McNeil and Minor L. McNeil executed in favor of and delivered to

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Mortgage Electronic Registration Systems, Inc., as nominee for Metropolitan National Bank, its successors and assigns a Mortgage on the subject property.

11. The Mortgage was duly acknowledged and filed for record with the Circuit Clerk and Ex-Officio Recorder for Saline County, Arkansas on March 11, 2010, in Book 10, at Page 017934. The recordation of the Mortgage created a first lien on the property.

12. Said Mortgage has been assigned to the Plaintiff herein by assignment recorded at Book 13, Page 052096.

13. The Mortgage contains a waiver of all right of redemption and provides that if there is a default, the lender has a right to declare the entire unpaid balance of the debt, plus interest thereon, to be immediately due and payable. The Mortgage and the note further provide for a collection of attorney's fees, title expenses, and costs upon default.

14. The note required monthly payments of principal and interest continuing until the indebtedness is fully paid.

15. On March 2, 2010, Minor L. McNeil executed a release of mortgage purporting to release the Plaintiff's mortgage attached to the Complaint as Exhibit "C" and filed for record with the Circuit Clerk and Ex-Officio Recorder for Conway County, Arkansas on March 11, 2010, in Book 10, at Page 017934.

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16. Defendant, Minor L. McNeil, did not pay or give consideration for the satisfaction of the Plaintiff's mortgage.

17. The recordation of the satisfaction of mortgage was in error and was contrary to the intent of Plaintiff, and Defendants, Deborah F. McNeil and Minor L. McNeil, that the Plaintiff's mortgage would be released only after the indebtedness secured thereby was paid in full.

18. Plaintiff is entitled to an order cancelling the alleged "release".

19. Plaintiff is entitled to an order reforming and reviving the mortgage recorded on March 11, 2010, in Book 10, at Page 017934, such that it is fully enforceable according to its terms as if the release of mortgage had not been recorded.

20. Deborah F. McNeil and Minor L. McNeil are now in default under the terms of the Mortgage and note, having failed to make the scheduled payments due March 1, 2013 and thereafter.

21. Plaintiff is now owed the principal sum of \$149,539.50, together with accrued interest thereon from the date of default until paid, a reasonable attorney's fees and costs, and escrow advances.

22. Neither Deborah F. McNeil nor Minor L. McNeil, is in active military service, and this action is not subject to the provisions of 50 U.S.C. App. § 501, *et seq.*, the Servicemembers Civil Relief Act.

23. The defendant, Minor L. McNeil, filed an Affidavit of Interest in the Office of the Circuit Clerk and Ex-Officio Recorder of Saline, Arkansas on May 7, 2013, at Book 13, Page 044668. Any claim, right, title or interest in the property that might be held by Minor L. McNeil by virtue of said Affidavit is junior, subordinate and inferior to any and all claims, right, title and interest held by plaintiff

IT IS THEREFORE, CONSIDERED, ORDERED, ADJUDGED and DECREED as follows:

A. For the reasons set forth in Plaintiff's Motion and supporting brief, Plaintiff's Motion for Summary Judgment is granted, and Plaintiff is hereby awarded the relief requested in its Complaint.

B. That erroneous "release" attached to the Complaint as Exhibit "E" is cancelled;

C. That the mortgage recorded on March 11, 2010, at Book 10, at Page 017934, is reformed and revived such and it is fully enforceable according to its terms as if the alleged satisfaction of mortgage had not been recorded;

D. Plaintiff is granted judgment *in personam* against Deborah F. McNeil and Minor L. McNeil and *in rem* against the subject property for \$149,539.50, together with accrued interest through September 30, 2016, in the amount of \$23,278.61, with interest accruing thereafter at a per diem rate of \$17.41 [\$2019.56]; escrow advances in the amount of \$8,683.45; and reasonable attorney's fees and costs in the amount of

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\$3665.00, [/s/ initials omitted] for a total judgment in the amount of \$187,186.12; [/s/ initials omitted]

E. Said judgment by virtue of the Mortgage in favor of Plaintiff constitutes a first lien on the property referred to herein;

F. If the foregoing judgment is not satisfied within ten (10) days from the date hereof, the Commissioner of this Court, hereinafter named, shall sell the property at the Courthouse of Saline County, Arkansas;

G. The lien upon the property should be and hereby is ordered foreclosed by the Court; that pursuant to such foreclosure of lien, the Circuit Clerk of Saline County, Arkansas is hereby appointed Commissioner of the Court for purposes of selling all interests of the parties herein and to the property at foreclosure sale. The sale may be postponed from time to time without further Orders of this Court Pursuant to Act 291 of 2013, and commissioner's fee collected under A.C.A § 21-6-412 shall be collected by the Circuit Clerk and paid into the county treasury to the credit of a fund to be known as the "circuit clerk commissioner's fee fund";

H. The proceeds from the sale shall be applied first to the cost thereof, then to the satisfaction of the judgment herein granted to plaintiff, with the remainder, if any, payable according to further order of the Court;

I. Such sale should be a public auction to the highest bidder for cash or upon credit of three (3) months, provided that if the sale is upon credit, a

good and sufficient surety to secure payment of the purchase price shall be given to the Commissioner, and the purchase price shall bear interest from the date of the sale until paid at the rate of 10% per annum; provided, however, if plaintiff is the highest bidder at the time of such foreclosure, plaintiff may pay the purchase price by credit given upon the judgment hereby granted to plaintiff, except as to the cost of the sale; that notice of the sale as hereby ordered, together with the terms thereof, shall be published within Saline County, Arkansas, such notice to be published one time prior to sale not less than ten (10) days prior to sale;

J. Upon confirmation of the sale herein ordered, the Commissioner hereby appointed shall execute and deliver to the purchaser a Commissioner's Deed which shall convey all title and interest of the parties therein and to the property;

K. The purchaser at the sale herein ordered shall, upon receipt of such conveyance, be entitled to a Writ of Assistance, upon application, to be placed in the possession of the property;

L. All rights of homestead, dower, redemption and appraisement have been waived by the terms of the instruments herein described, and each such right, on the part of defendant, be and hereby are ordered forever barred.

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IT IS SO ORDERED

/s/ Gary Arnold
The Honorable Gary Arnold

DATE: 1-24-17
