IN THE COURT OF COMMON PLEAS

CUYAHOGA COUNTY, OHIO

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| bANK OF AMERICA, N.A.    Plaintiff  vs.  CHARLES J. IMARS, *et al.,*  Defendants | )  )  )  )  )  )  )  )  )  )  ) | CASE NO. 15 839211  JUDGE ROBERT MCCLELLAND  MAGISTRATE AUGUSTYN |
| AGREED JUDGMENT ENTRY IN FORECLOSURE |

This cause was submitted for determination upon:

1. the Complaint of Plaintiff;
2. the Answer and Reply to Cross-Claim of Defendant Charles J. Imars;
3. the Amended Answer, Counterclaim, and Cross-Claim of Defendants Sherman F. Denison, and Rebecca Dunn, as Co-Executor of the Estate of George J. Dunn, and E. Bruce Dunn, as Co-Executor of George J. Dunn (the “Dunn Co-Executors”; collectively, the “Denison/Dunn Defendants”);
4. Plaintiff’s Reply to Cross-Claim and Counterclaim;
5. the Answer Disclaiming Interest of Defendant United States of America;
6. Plaintiff’s Motion for Default and Motion for Summary Judgment;
7. the Motion for Summary Judgment of the Denison/Dunn Defendants;
8. the briefs in opposition and reply brief; and
9. the record herein.

The Court, having considered the foregoing pleadings and the record herein, hereby finds, determines and orders as follows, upon the stipulation of the undersigned counsel for the parties remaining in this case.

**THE PROPERTY**

The real property and improvements that are the subject of this case are known as and located at 13200 County Line Road, Hunting Valley, Ohio 44022, PPNs 881-39-003 and 843-27- 010 (the “Property”). A legal description of the Property is attached to this Judgment Entry as Exhibit A and incorporated herein by this reference. Mr. Imars is the owner of record of the Property.

**PARTIES**

The Court finds that all parties necessary for a complete adjudication have been properly served with a summons and a copy of the Complaint, and thus are properly before the Court.

The Court also finds that the defendants, Jane Doe, Unknown Spouse, if any, of Charles J. Imars, and Capital One Bank (USA), N.A., fka Capital One Bank, are in default of an Answer or other pleading and have by reason thereof confessed the allegations of the Complaint and other pleadings herein to be true.

**TAXES**

The Court finds that there is due the Cuyahoga County Treasurer current real estate taxes, accrued taxes, assessments, and penalties on the Property including: (1) taxes, assessments, interest, and penalties, the lien for which attaches before the date of sale but that are not yet determined, assessed and levied for the year that includes the date of sale, apportioned pro rata to the part of that year that precedes the date of sale, and (2) all other taxes, assessments, penalties, and interest which attached for a prior tax year but have not been paid on or before the date of the judicial sale. The exact amount of said taxes, accrued taxes, assessments, and penalties are unascertainable at this time, but will be determined at the time of the sale of the Property, for which amount the Cuyahoga County Treasurer has a good and valid lien.

**THE PROMISSORY NOTE AND MORTGAGE OF BANK OF AMERICA, N.A.**

The Court finds, and the parties so stipulate, that the defendant, Charles J. Imars, executed and delivered that certain promissory note entitled “Fixed Rate Note – Closed End (Home Equity Conversion)” (the “Bank’s Promissory Note”), and that in order to secure the payment of the Bank’s Promissory Note, defendant Charles J. Imars, executed and delivered the reverse mortgage set forth in the Second Count of said Complaint (the “Bank’s Mortgage”) to World Alliance Financial Corp., thereby conveying the Property to it.

The Court finds that the Bank’s Mortgage was duly filed with the Cuyahoga County Recorder on April 21, 2009 and recorded as Instrument No. 200904210355 of the Mortgage Records of said County and thereby became and is a valid first mortgage lien upon the Property, subject only to the lien of the Treasurer for taxes; and that said mortgage was assigned to plaintiff.

The Court finds that the mortgage assignment to plaintiff was executed before the filing of the case. The allonge endorsing the Bank’s Promissory Note to plaintiff, while undated, appears on a copy of the note attached to the Complaint and, thus, must have been executed before the filing of the Complaint. Accordingly, the Court finds that plaintiff was entitled to enforce both the Bank’s Promissory Note and the Bank’s Mortgage when the case was filed and has standing to bring this action.

The Court finds, and the parties so stipulate, that there is due and owing to plaintiff under the Bank’s Promissory Note and the Bank’s Mortgage the aggregate amount of $\_\_\_\_\_\_\_\_\_\_\_\_\_ as of \_\_\_\_\_\_\_\_\_\_\_\_, 2017, with interest accruing thereupon at the rate of $\_\_\_\_\_ per day until paid, which amount is secured by the first mortgage lien of plaintiff.

**THE PROMISSORY NOTES AND MORTGAGE OF THE DENISON/DUNN DEFENDANTS**

The Court finds, and the parties so stipulate, that defendant Charles J. Imars executed and delivered two Cognovit Demand Promissory Notes, one payable to the order of Sherman F. Denison, in the original principal amount $290,702.83, and the other payable to the order of the Dunn Co-Executors, in the original amount of $181,270.19 (collectively, the “Denison/Dunn Notes”). The full amount of principal, together with all accrued interest, remains due and unpaid under the Denison/Dunn Notes. There is due from defendant Charles J. Imars to Sherman F. Denison the sum of $496,657.03 plus interest at the rate of $119.14 per day from February 1, 2016. There is due to Rebecca Dunn and E. Bruce Dunn, as Co-Executors for the Estate of George J. Dunn the sum of $317,123.68 plus interest at the rate of $74.29 per day from July 1, 2016.

In order to secure the payment of the Denison/Dunn Notes aforesaid, defendant Charles Imars executed and delivered to Denison/Dunn Defendants a certain open-end mortgage deed conveying the Property to them (the “Denison/Dunn Mortgage”). Said mortgage was duly filed with the Recorder of Cuyahoga County on June 24, 2010 and recorded in AFN 201006240197, of the County Records; and thereby became and is a valid second mortgage lien upon the Property subject only to the lien of the Cuyahoga County Treasurer and the Bank’s Mortgage; that the conditions in the Denison/Dunn Mortgage have been broken and the same has become absolute and the Denison/Dunn Defendants are entitled to have the equity of redemption in and to the Property foreclosed.

The Court finds that defendant, United States of America, has disclaimed any right, title, claim or interest in the premises described herein.

The Court further finds that there is no just reason for delay in entering the judgments as final judgments as provided herein.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that, unless there is paid, or caused to be paid, within three (3) days of the Court’s entry of this Judgment Entry, to the Clerk of this Court the costs of this case, including the cost of the Preliminary Judicial Report filed herein for which plaintiff is entitled to reimbursement, real estate taxes due and payable, and amounts found due to Bank of America, N.A. and the Denison/Dunn Defendants as aforesaid, together with interest due thereon, and the costs incurred, if any, then the equity of redemption of defendant Charles J. Imars and all persons claiming through him, and of all other Defendants in this action, in and to the Property shall be foreclosed and the plaintiff Bank of America, N.A. or the Denison/Dunn Defendants may cause an order of appraisal to be issued to the Sheriff of Cuyahoga County ordering him to appraise the Property, and a separate order of sale to the private selling officer identified below to advertise in a paper of general circulation within the County, and sell the Property as upon execution and according to law, free and clear of the interest of all parties to this action. There shall be no further equity of redemption, except that with respect to any lien of the United States, the United States shall have the right to redeem within the time period provided by 28 U.S.C. §2410(c).

The Court hereby authorizes the private selling officer identified below to sell the real estate in accordance with R.C. §2329.152. In the event an order of sale is returned by the selling officer unexecuted, subsequent orders of sale shall issue in accord with appraisal instructions contained in the praecipe for those sales.

Because the Property is a residential property, if the Property remains unsold after the first auction, then a second auction shall be held and the Property shall be sold to the highest bidder without regard to the minimum bid requirement in §2329.20 of the Revised Code. This second auction shall be held no earlier than seven days and not later than thirty days after the first auction.

If there is a bidder at the second or subsequent sales, the judgment debtor and the first lien holder have the right to redeem the property within fourteen days of the sale, by paying the purchase price to the Clerk of Court. Upon timely payment, the Court will proceed as described in R.C. §2329.31 with the redeeming party considered the successful purchaser at sale.

**IT IS FURTHER ORDERED** that the private selling officer, upon confirmation of sale, shall pay from the proceeds thereof the following:

FIRST: To the Clerk of Courts the costs of this action, including the sum of $1,588.00 to The Law Offices of John D. Clunk Co., L.P.A. for the Preliminary Judicial Report.

SECOND: IF THE PLAINTIFF IS THE PURCHASER AND HAS ELECTED TO FORGO THE PAYMENT FROM THE SALE PROCEEDS OF CERTAIN TAXES AS PROVIDED IN R.C. §323.47(B):

To the Treasurer of Cuyahoga County, Ohio, taxes, accrued, taxes, assessments, and penalties on the premises hereinafter described, as shown on the County Treasurer’s tax duplicate;

OTHERWISE:

To the Cuyahoga County Treasurer, taxes, assessments, interest, and penalties, the lien for which attaches before the date of sale but that are not yet determined, assessed and levied for the year that includes the date of sale, apportioned pro rata to the part of that year that precedes the date of sale, and all other taxes, assessments, penalties, and interest which attached for a prior tax year but have not been paid on or before the date of sale.

THIRD: To plaintiff Bank of America, N.A., the amount of $\_\_\_\_\_\_\_\_\_\_\_\_, with interest thereon from \_\_\_\_\_\_\_\_\_\_\_\_, 2017 until paid at the rate of $\_\_\_\_\_\_\_ per day.

FOURTH: To the undersigned counsel for Sherman F. Denison, and E. Bruce Dunn and Rebecca Dunn as Co-Executors of the Estate of George J. Dunn, from any remaining funds, the aggregate amount of $813,780.71, with interest thereon from February 1, 2016 until paid at the combined rate of $193.43 per day, for distribution among Denison and the Dunn Co-Executors as they shall agree.

FIFTH: To plaintiff Bank of America, N.A., from any remaining funds, the amount of advances made after June 24, 2010 under the Bank’s Mortgage.

SIXTH: To the Clerk of Courts, any remaining funds.

In the event an order of sale is retuned by the private selling officer unexecuted, subsequent orders of sale shall issue in accord with appraisal instructions contained in the Praecipe for those sales.

In the event plaintiff is the successful bidder at the sale, the amount of the deposits made herein by plaintiff and the cost of the Preliminary Judicial Report in the sum of $1,588.00 shall be deducted from the amount of court costs otherwise due and payable herein.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that upon the distribution of the proceeds of the sale as aforesaid, the Clerk of this Court shall issue his certificate to the County Recorder directing him to enter the same on the margin of the records of said mortgages and liens, releasing said liens from the Property.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that after said sale has been completed, a deed will be conveyed to the purchaser and a Writ of Possession of said property be issued.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that such taxes and special assessments or installments thereof which are not legally due and payable according to law at the time of the confirmation shall not be abated or removed from the tax duplicates and records in the offices of the Fiscal Officer and Treasurer of Cuyahoga County, but shall be and remain the first and best lien upon the Property, and the purchaser shall take the Property subject to same.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that, except as otherwise provided herein, any Defendant owning or claiming any right, title or interest in or lien upon the Property, together with such who may have right of dower, shall be and they are hereby forever barred from asserting any right, title, or interest in, or lien upon the Property.

**SALE OF THE PROPERTY BY PRIVATE SELLING OFFICER**

The Court finds, and the parties so stipulate, that appointing a licensed auctioneer to conduct the foreclosure sale in this case will increase the chances of maximizing the number of competitive bidders and, thus, the sale price for the Property. This Court further finds that the proposed private selling officer, John C. Froelich, CAI, of Ohio Real Estate Auctions, LLC (the “Auctioneer”), has the requisite qualifications and experience to serve as such private selling officer.

**THEREFORE, IT IS HEREBY ORDERED**, pursuant to R.C. 2329.152, that the Auctioneer is authorized to serve as a private selling officer to conduct a public auction sale of the Property. Such sale shall be conducted according to the following requirements:

1. The Auctioneer shall hold the auction at the Property.
2. The Auctioneer, in his discretion, may hold one or more open houses to allow any person to view the Property prior to the sale. The Auctioneer may deduct any costs associated with holding of any open house from the proceeds of the sale as an allowed cost.
3. Upon the filing of a praecipe, the Clerk of the Court shall immediately issue both of the following:

(1) an order of appraisal to the Sheriff, who shall obtain an appraisal of the real estate in conformity with R.C. 2329.17 and 2329.18; and

(2) an order of sale to the Auctioneer, who, after the return or determination of the appraisal, shall advertise and sell the Property in conformity with the applicable provisions of R.C. 2329.01 to 2329.61.

1. The three disinterested freeholders selected by the Sheriff pursuant to R.C. 2329.17 shall be directed to return to the Sheriff an estimate of the value of the Property in money within 21 calendar days of the issuance of the order of appraisal by the Clerk of the Court, and also to deliver a copy of their appraisal to the Auctioneer contemporaneously with their delivery of their appraisal to the Sheriff.
2. The cost of the appraisal required by R.C. 2329.17 shall be taxed as costs in the case.
3. The Property shall not be sold for less than two-thirds of the amount of the appraised value as determined by the appraisal.

1. The Auctioneer shall give public notice of the sale, including the date, time, and place of the sale, the amount of the minimum sale price, and the other matters required by R.C. 2329.26, once a week for at least three consecutive weeks before the day of sale in a newspaper of general circulation in Cuyahoga County, Ohio.
2. The cost of the advertisement required by R.C. 2329.26 shall be taxed as costs in the case.
3. All costs incurred by the Auctioneer other than the costs of the appraisal required by R.C. 2329.17 and the advertisement of the Property required by R.C. 2329.26 shall be taxed as costs in the case up to an amount equal to one and one-half percent (1½ %) of the sale price of the Property. To the extent that such fees and costs exceed one and one-half percent (1½ %) of the sale price of the Property, they shall not be included in the amount necessary to redeem real estate under R.C. 2329.33 but shall be paid from Mrs. Imars’ portion of the proceeds of the sale.
4. The Auctioneer is authorized to receive a fee for his services equal to six percent (6%) of the high bid amount, in the form of a “buyer’s premium” over and above the high bid amount, which shall become a part of the sale proceeds.
5. Unless plaintiff shall bid in the amount of its mortgage lien, the winning bidder shall be required to make a deposit at the time of the auction sale in the amount of five percent (5%) of the high bid amount.
6. After the sale, the Auctioneer shall execute and cause to be recorded on behalf of the purchaser a deed of conveyance of the real estate sold, in the form attached to this Judgment Entry as Exhibit B.
7. The Auctioneer shall hire a licensed title insurance agency (the “Title Agent”) to perform title, escrow, and closing services related to the sale of the Property. The Title Agent’s fees to the Auctioneer for such services shall not exceed $500, and shall be taxed as costs in this case.
8. The Auctioneer shall collect from the winning bidder at the auction sale the information required by R.C. 2329.271.

After the auction sale is concluded, the Auctioneer shall file with the Court an itemized report of all appraisal, publication, marketing, open house and other expenses of sale conducted under this Judgment Entry and all costs incurred and fees charged by the Auctioneer for marketing the real estate, the fee charged by the Title Agent for administrative services, if applicable, and title, escrow, and closing services.

**THIS JUDGMENT ENTRY** supersedes in its entirety the Court’s Order Adopting Magistrate’s Decision with Modifications and Overruling Objections entered on January 25, 2017.

RECORD IS HEREBY ORDERED.

MAGISTRATE KEVIN C. AUGUSTYN

The parties, through their undersigned counsel, hereby stipulate and agree to the entry of the foregoing Agreed Judgment Entry in Foreclosure, and expressly waive their right to object to or appeal the Court’s adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law including under Civ. R. 53(D)(3)(b).

The Law Offices of John D. Clunk Co., LPA

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*Attorneys for Plaintiff, Bank of America, N.A.*

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*Attorney for Defendants, Rebecca Dunn and*

*Bruce Dunn, Co-Executors, and Sherman F. Denison*

Exhibit A

Legal Description of the Property

Property Address: 13200 County Line Road, Hunting Valley, Ohio

PPNs 881-39-003 and 843-27- 010

Exhibit B

Form of Deed

**PRIVATE SELLING OFFICER’S DEED**

**Ohio Revised Code §§2329.36 and .152**

Case No. CV 15-839221, Court of Common Pleas of Cuyahoga County, Ohio

Parties to the Judgment: W. Christopher Murray II, Cuyahoga County Treasurer; Bank of America, N.A.; Charles J. Imars; Sherman F. Denison; and Rebecca Dunn and E. Bruce Dunn, as Co-Executors of the Estate of George J. Dunn.

Owner of the Property Sold: Charles J. Imars.

Prior Instrument Reference: Volume \_\_\_\_\_, Page \_\_\_\_ of Cuyahoga County Records.

**I, JOHN C. FROELICH**, a Private Selling Officer as defined in section 2329.01 of the Revised Code, pursuant to (a) the Agreed Judgement Entry in Foreclosure entered on \_\_\_\_\_\_\_\_\_\_\_\_, which awarded judgment to Bank of America, N.A. in the amount of $ \_\_\_\_\_\_\_\_\_\_\_\_\_\_, plus accrued interest, and to Sherman F. Denison and Rebecca Dunn and E. Bruce Dunn, as Co-Executors of the Estate of George J. Dunn, in the aggregate amount of $ \_\_\_\_\_\_\_\_\_\_\_\_, plus accrued interest, and (b) the Confirmation of Sale entered on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and in consideration of the sum of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ($\_\_\_\_\_\_\_\_\_\_), the receipt whereof is hereby acknowledged, do hereby grant, sell and convey unto \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, whose tax mailing address is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, all the rights, title and interest of the parties in Case No. CV 15-839221 in the Court of Common Pleas of Cuyahoga County, Ohio, and captioned *Bank of America, N.A. v. Charles J. Imars, et al.*, and all pleadings therein incorporated herein by reference, in and to the following Lands and Tenements situated in the Village of Gates Mills and the Village of Hunting Valley, County of Cuyahoga and State of Ohio, known and described as follows, to-wit:

See the Legal Description on Exhibit A,

which is attached hereto and incorporated herein.

This deed does not reflect, and the title conveyed hereby remains subject to, any restrictions, conditions and easements of record.

Executed this \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_.

John C. Froelich, as Private Selling Officer

Ohio Auctioneer License #2010000128

Ohio Real Estate License #2011001993

ACKNOWLEDGMENT

STATE OF OHIO )

) ss:

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_ )

Before me, a Notary Public in and for said County, personally appeared JOHN C. FROELICH, as Private Selling Officer, who acknowledged that he executed the foregoing deed as his free act and deed in such capacity.

WITNESS my signature and notarial seal at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Ohio this \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 201\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

This instrument prepared by:

Bruce L. Waterhouse, Jr.

Nicola, Gudbranson & Cooper LLC

Republic Building, Suite 1400

25 West Prospect Avenue

Cleveland, OH 44115-1048

Phone: (216) 621-7227

Exhibit A

Legal Description

Property Address: 13200 County Line Road, Hunting Valley, Ohio

PPNs 881-39-003 and 843-27- 010