

[Revised 10-19-16]

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

The Bank,)	
)	
Plaintiff)	
)	CASE NO. _____
)	
)	JUDGE His or Her Honor
)	
)	<u>ORDER ADOPTING</u>
)	<u>MAGISTRATE'S DECISION</u>
)	
-vs-)	
)	
Property Owner, et al)	
)	
Defendants)	

This cause is before the court on the decision of the magistrate, the evidence admitted at the hearing, and the motions and pleadings in the court file.

Summary judgment granted in favor of plaintiff against the following defendants:

[Names of Defendants]

Default judgment granted in favor of plaintiff against the following defendants:

[Names of Defendants].

The court adopts the magistrate's decision dated [date of magistrate's decision] granting a foreclosure on the premises.

(SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF)
PREMISES COMMONLY KNOWN AS:

xxxxxx.
PERMANENT PARCEL NO.: xxxxxx

The parties who have asserted an interest in the premises [add “and defendant [state lienholder]” where a state lienholder is a party and its liens are uncontested] will be paid according to their priority. The claims of all parties who have asserted an interest in the premises and whose claims are not paid in the order of distribution herein are transferred to the proceeds of sale and will be determined at a later date.

Judgment is rendered in favor of plaintiff against defendant [defendant’s name] in the sum of \$ _____ plus interest at the rate of ___% per annum from [date].

The Court finds that plaintiff has standing to bring this case.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that, unless the sums hereinabove found due, together with the costs of this action, be fully paid within three days of the date of the adoption of the magistrate's decision, the equity of redemption and dower of all the defendants in and to said premises will be foreclosed, and said premises sold; and that an order of sale shall issue to the Sheriff of Cuyahoga County, directing him to appraise, advertise in a paper of general circulation within the county, and sell said premises as upon execution and according to law, free and clear of the interest of all parties to this action. If the court authorizes a private selling officer to sell the real estate, then the sale must proceed in accordance with R.C. §2329.152.

If this is a residential property and 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 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 creditor 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 Courts. Upon timely payment, the court will proceed as described in R.C. §2329.31 with the redeeming party considered the successful purchaser at sale.

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.

Coming now to distribute the proceeds of said sale, it is ordered that the Sheriff or private selling officer out of the funds in his hands pay:

FIRST: To the Clerk of Courts the costs of this action, including the sum of \$_____ payable to the plaintiff for the judicial report filed herein, which sum is hereby taxed as costs.

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 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, the sum of \$_____ plus interest thereon at the rate of _____% per annum from [date].

FOURTH: The balance, if any, to the Clerk of Courts to be held pending further order.

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 \$_____, will be deducted from the total amount of court costs otherwise payable herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there may be due plaintiff additional sums advanced by it under the terms of the note and mortgage to pay real estate taxes, hazard insurance premiums, and property protection, which sums are to be determined by further Order.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, upon the confirmation of sale made herein, a minute of these proceedings be entered upon the Cuyahoga County Records involved in this action to reflect that they are released as liens against the subject premises.

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

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, if a successful sale occurs, the parties are ordered to file any motions for reimbursement of advances pursuant to R.C. § 5301.233 within 21 days from the sale. A party may move the court to extend this deadline for good cause shown. No party will be granted reimbursement for advances if such a motion is not filed before this deadline. Within seven days from the filing of a motion for reimbursement, a party may file a brief in opposition. The court will then make a careful examination of the sale pursuant to the applicable statutes. If, however, this case does not involve advances or no mortgagee intends to seek advances, a party may file a notice to this effect within seven days of the sale. Where such notice is filed, no party filing such notice will be granted reimbursement for advances and the court will make a careful examination of the sale pursuant to the applicable statutes upon the return of the

order of sale. A party may redeem before confirmation of the sale. Nothing in this order prevents the court from staying the confirmation of sale to permit a property owner additional time to redeem.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to Civ.R. 54(B), there is no just reason for delay.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, pursuant to Civ.R. 58(B), the Clerk of Courts must serve, in a manner prescribed by Civ.R. 5(B), all parties not in default for failure to appear notice of this judgment and its date of entry upon the journal and must note the service on the appearance docket.

[If other claims for relief are asserted such as reformation or declaratory judgment, it will be necessary to add a paragraph to this section. Examples include:

As the result of mutual mistake of the parties, the granting clause of the mortgage conveys only the interest of xxxx. The parties intended the mortgage to convey the interest of both xxxx and yyyy. Accordingly, IT IS FURTHER ORDERED ADJUDGED AND DECREED that the granting clause in the mortgage is reformed to reflect the intention of the parties.

As the result of mutual mistake of the parties, the legal description on plaintiff's mortgage and the deed to defendant xxxx contain errors. The parties to the mortgage and deed intended to describe the property described in Exhibit "A" attached hereto. Accordingly, IT IS FURTHER ORDERED ADJUDGED AND DECREED the legal descriptions in the mortgage and deed are reformed to match the legal description in Exhibit "A".

The acknowledgment of plaintiff's mortgage is defective in that the acknowledgment clause does not include the names of the grantors. Notwithstanding this defect, this mortgage is

enforceable between the parties in equity Accordingly, IT IS FURTHER ORDERED
ADJUDGED AND DECREED that the subject mortgage will be enforced herein as an equitable
mortgage.

Defendant xxx intended to assign the subject note and mortgage to plaintiff but never
completed the necessary documentation to record the assignment. Accordingly, IT IS FURTHER
ORDERED ADJUDGED AND DECREED that plaintiff's is entitled to a declaration that it is the
holder of the subject note and mortgage and that it is entitled to enforce said note and mortgage.]

IT IS SO ORDERED

Judge

Exhibit A

[Legal description – Photocopy from Preliminary Judicial Report.]