

DL 9/23/09 4:52:11
DL BK T BK 3,082 PG 565
DESOTO COUNTY, MS
W.E. DAVIS, CH CLERK

9/23/09 4:51:26
DK L BK 17 PG 654
DESOTO COUNTY, MS
W.E. DAVIS, CH CLERK

IN THE CHANCERY COURT OF DESOTO COUNTY, MISSISSIPPI

CENTRAL MORTGAGE
COMPANY,

Plaintiffs,

v.

No. 09-09-2018

FIRST TENNESSEE BANK
NATIONAL ASSOCIATION, CHARLES
CHILDERS, and CHERYL CHILDERS,

Defendants.

ABSTRACT AND NOTICE OF LIEN LIS PENDENS

On September 23rd, 2009, Central Mortgage Company ("Central Mortgage") as plaintiff filed its complaint against First Tennessee Bank National Association ("First Tennessee") and Charles Childers and Cheryl Childers (collectively, "Childers") as defendants in the Chancery Court of DeSoto County, Mississippi, Cause Number 09-09-2018. A copy of said complaint, without exhibits, is attached hereto as Exhibit A.

The description of the Property involved in this lawsuit ("Property") is as follows:

Lot 142, Section C, Dickens Place PUD, situated in Sections 9 & 16, Township 2 South, Range 7 West, as shown by plat of record in Plat Book 66, Pages 16-20, Chancery Clerk's Office for DeSoto County, Mississippi, to which plat reference is hereby made for a more complete legal description.

The Property is located in DeSoto County, Mississippi and is commonly known as 4235 Chalice Drive, Southaven, Mississippi.

The Property is owned by Childers.

9

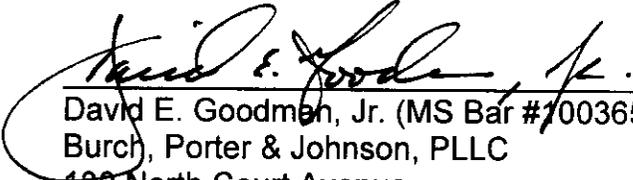
The Property is subject to a deed of trust executed by Childers for the benefit of First Tennessee recorded in Book 1,807, Page 457, Chancery Court Clerk's Office, DeSoto County, Mississippi as modified by modification agreement recorded in Book 2,106, Page 100, said Chancery Clerk's Office (collectively, "First Tennessee Deed of Trust") and by a deed of trust executed by Childers for the benefit of DeSoto Home Mortgage recorded in Book 1,832, Page 248 said Chancery Clerk's Office ("DeSoto Deed of Trust"). By endorsement of the note secured by the DeSoto Deed of Trust and assignment of the DeSoto Deed of Trust to Central Mortgage, plaintiff Central Mortgage is now the owner and holder of said note and the DeSoto Deed of Trust.

It was intended and required that the DeSoto Deed of Trust be a first lien deed of trust. At the closing of the loan secured by the DeSoto Deed of Trust, \$96,457.49 from the proceeds of the loan was used to pay off the prior deed of trust for the benefit of Union Planters Bank recorded in Book 1,242, Page 48, as corrected in Book 1,287, Page 714 said Chancery Clerk's Office and as assigned to Chase Mortgage Company ("Union Planters Deed of Trust"). As a result of such payment, the Union Planters Deed of Trust was released by release recorded in Book 1,829, Page 279, said Chancery Clerk's Office.

The complaint alleges that the First Tennessee Deed of Trust was intended to be a second lien deed of trust and alternatively that plaintiff Central Mortgage, as subrogee of the Union Planters Deed of Trust, is equitably subrogated to the rights and remedies of the holder of the Union Planters Deed of Trust and entitled to have the Union Planters Deed of Trust declared a lien on the Property for the benefit of Central Mortgage in priority over the First Tennessee Deed of Trust.

In the complaint, plaintiff Central Mortgage prays that the Court declare and decree (1) that the First Tennessee Deed of Trust is subject and subordinate to the DeSoto Deed of Trust, and, alternatively, (2) that Central Mortgage is entitled to enforce the rights and remedies of Union Planters Bank under the Union Planters Deed of Trust and that the Union Planters Deed of Trust is a lien on the Property for the benefit of Central Mortgage in priority over the First Tennessee Deed of Trust.

Plaintiff Central Mortgage seeks to fix a lien *lis pendens* on the property pursuant to Miss. Code Ann. § 11-47-1, *et seq.*


David E. Goodman, Jr. (MS Bar #100365)
Burch, Porter & Johnson, PLLC
130 North Court Avenue
Memphis, Tennessee 38103
(901) 524-5000
Attorney for Central Mortgage Company

Upon Recording, Please Return to:
David E. Goodman, Jr.
BURCH, PORTER & JOHNSON, PLLC
130 North Court Avenue
Memphis, Tennessee 38103

Exhibit A

CENTRAL MORTGAGE COMPANY,

Plaintiff,

v.

No. _____

FIRST TENNESSEE BANK
NATIONAL ASSOCIATION, CHARLES
CHILDERS, and CHERYL CHILDERS,

Defendants.

COMPLAINT FOR DECLARATORY JUDGMENT

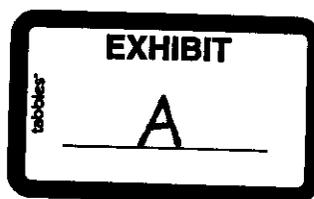
For its complaint, plaintiff Central Mortgage Company ("Central Mortgage") respectfully states:

1. Central Mortgage is a corporation organized and existing under the laws of the State of Arkansas.

2. Defendant First Tennessee Bank National Association ("First Tennessee") is a national banking association. First Tennessee's registered agent for service of process is CT Corporation System, 645 Lakeland East Drive, Suite 101, Flowood, Mississippi 39232.

3. Defendants Charles Childers and Cheryl Childers (collectively, "Childers") are residents of DeSoto County, Mississippi.

4. The property involved in this suit is owned by Childers, is located in DeSoto County, is commonly known as 4235 Chalice Drive, Southaven, Mississippi, and is more particularly described as follows ("Property"):



Lot 142, Section C, Dickens Place PUD, situated in Sections 9 & 16, Township 2 South, Range 7 West, as shown by plat of record in Plat Book 66, Pages 16-20, Chancery Clerk's Office for DeSoto County, Mississippi, to which plat reference is hereby made for a more complete legal description.

5. The Property was encumbered by a deed of trust dated August 25, 2000, for the benefit of Union Planters Bank, recorded in Book 1242, Page 48, Chancery Court Clerk's Office, DeSoto County, Mississippi as corrected by correction deed of trust recorded in Book 1,287, Page 714, said Chancery Court Clerk's Office, a copy of which deed of trust as corrected is attached hereto as Exhibit A. Said deed of trust as corrected is hereinafter referred to as "Union Planters Deed of Trust." The Union Planters Deed of Trust secured \$98,000.

6. The Union Planters Deed of Trust was assigned to Chase Mortgage Company by assignment dated February 1, 2001 and recorded in Book 1482, Page 402, said Chancery Court Clerk's Office, a copy of which assignment is attached hereto as Exhibit B.

7. To evidence a \$129,000 mortgage loan by DeSoto Home Mortgage ("DeSoto") to Childers, Childers executed to order of DeSoto their promissory note dated September 3, 2003 in the original principal amount of \$129,000, a copy of which Note is attached hereto as Exhibit C ("DeSoto Note"). To secure the DeSoto Note, Childers executed and delivered a deed of trust dated September 3, 2006 encumbering the Property, recorded September 24, 2003, in Book 1,832, Page 248, said Chancery Court Clerk's Office, a copy of which deed of trust is attached hereto as Exhibit D ("DeSoto Deed of Trust"). The DeSoto Deed of Trust states that MERS is the beneficiary of the DeSoto Deed of Trust and the nominee of DeSoto.

8. It was intended and required that the Union Planters Deed of Trust be paid off so that the DeSoto Deed of Trust be a first priority lien on the Property.

9. The closing of the \$129,000 loan by DeSoto to Childers secured by the DeSoto Deed of Trust occurred on or about September 3, 2003. In order that the DeSoto Deed of Trust would be a first lien deed of trust on the Property, \$96,457.49 from the \$129,000 loan proceeds of the DeSoto loan to Childers was used to pay off the balance remaining on the prior Union Planters Deed of Trust. A copy of the loan settlement statement is attached as Exhibit E and shows the payment of said \$96,457.49 to discharge the prior Union Planters Deed of Trust. A copy of the release of the Union Planters Deed of Trust recorded September 22, 2003 in Book 1829, Page 279, said Chancery Court Clerk's Office, is attached hereto as Exhibit F.

10. Shortly prior to the closing of the \$129,000 loan by DeSoto to Childers, Childers had executed and delivered a deed of trust dated August 19, 2003 securing a debt of \$250,000 of Childers Enterprises, LLC to First Tennessee Bank, recorded August 26, 2003 in Book 1807, Page 457, said Chancery Court Clerk's Office, as modified by Modification Agreement dated February 6, recorded November 12, 2004 in Book 2106, Page 100, said Chancery Clerk's Office, a copy of which deed of trust as modified is attached hereto as Exhibit G ("First Tennessee Deed of Trust"). At the time of recording of the First Tennessee Deed of Trust, it was subject and subordinate to the Union Planters Deed of Trust.

11. It was intended that the First Tennessee Deed of Trust be a second lien deed of trust.

12. As shown by Exhibit C, the \$129,000 DeSoto Note was endorsed by DeSoto to Crescent Mortgage Services, Inc., which endorsed the note in blank. The DeSoto Deed of Trust was assigned by MERS to Central Mortgage by assignment dated June 30, 2009 recorded in Book 3055, Page 785, said Chancery Clerk's Office, copy of which assignment is attached hereto as Exhibit H. Plaintiff Central Mortgage is the owner and holder of the DeSoto Note and the DeSoto Deed of Trust.

COUNT I

13. Plaintiff is entitled to have the First Tennessee Deed of Trust be declared and decreed to be subject and subordinate to the DeSoto Deed of Trust.

COUNT II

14. Alternatively, plaintiff, as subrogee of the holder of the Union Planters Deed of Trust at the time it was paid off from the proceeds of the loan by DeSoto to Childers, is entitled to step into the shoes of the holder of the Union Planters Deed of Trust at the time it was paid off, to be equitably subrogated to the rights and remedies of said holder, and to have the Union Planters Deed of Trust declared a lien on the Property for the benefit of Central Mortgage in priority over the First Tennessee Deed of Trust.

15. There is an existing dispute between the parties that is appropriate for resolution by the Court, including the issuance of a declaratory judgment. The issuance of a declaratory judgment will serve a useful purpose in clarifying and determining the legal relations at issue and will provide relief from the uncertainty and controversy giving rise to this proceeding. Plaintiff is entitled to a declaratory judgment pursuant to Rule 57, Mississippi Rules of Civil Procedure.

16. Plaintiff is entitled to a lien lis pendens as to the Property.

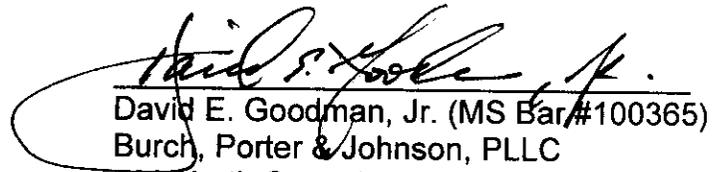
WHEREFORE, plaintiff prays that:

1. The Court declare and decree that the First Tennessee Deed of Trust is subject and subordinate to the DeSoto Deed of Trust;

2. Alternatively, the Court declare and decree that plaintiff Central Mortgage is equitably subrogated to the rights and remedies of the holder of the Union Planters Deed of Trust at the time it was paid off from the proceeds of the loan by DeSoto to Childers, that plaintiff Central Mortgage is entitled to enforce the rights and remedies of Union Planters Bank under the Union Planters Deed of Trust, and that the Union Planters Deed of Trust is a lien on the Property for the benefit of Central Mortgage in priority over the First Tennessee Deed of Trust; and

3. Plaintiff has such other and further relief to which it is entitled.

Respectfully submitted,


David E. Goodman, Jr. (MS Bar #100365)
Burch, Porter & Johnson, PLLC
130 North Court Avenue
Memphis, Tennessee 38103
(901) 524-5000
Attorney for Plaintiff Central Mortgage
Company