

IN THE CHANCERY COURT OF DESOTO COUNTY, MISSISSIPPI

ROSE B. LOFTIS

PLAINTIFF

VS.

CAUSE NO. 02-11-1598

MANUFACTURERS AND TRADERS TRUST COMPANY,
 TRUSTEE FOR SECURITIZATION SERIES 1996 AGREEMENT
 DATED AUGUST 20, 1996, CONTI MORTGAGE CORPORATION,
 FIRST GREENSBORO HOME EQUITY, INC., JOHN C. MORRIS, III,
 SUBSTITUTE TRUSTEE, IMPACT FUNDING CORPORATION,
 MERCHANTS and FARMERS BANK, CONCORD
 ACCEPTANCE CORPORATION and MICHAEL WAYNE HALE

DEFENDANTS

**DEFAULT JUDGMENT REFORMING DOCUMENTS AND
 QUIETING AND CONFIRMING TITLE**

This cause coming on *Complaint for Reformation of Documents and to Quiet and Confirm Title* and upon Plaintiff's *Motion for Default Judgment* pursuant to Rule 55(b) of the Mississippi Rules of Civil Procedure, and all defendants having been duly served in the time and manner prescribed by law, and not being infants, or incompetent persons, nor in military service, and having failed to plead or otherwise defend, and Defendants' Default having been duly entered by the Clerk, and Defendants, Manufacturers and Traders Trust Company, Trustee for Securitization Series 1996 Agreement Dated August 20, 1996, Conti Mortgage Corporation, First Greensboro Home Equity, Inc., John C. Morris, III, Substitute Trustee, Impact Funding Corporation, Merchants and Farmers Bank, Concord Acceptance Corporation and Michael Wayne Hale, having taken no proceeding since

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such Default was entered, and the Court, being advised in the premises, does find and Order as follows:

1. That this Court has jurisdiction of the subject matter and of the parties.
2. That Plaintiff, Rose B. Loftis, is the record holder of the title and in possession of the following described parcel of real estate situated in the City of Southaven, DeSoto County, Mississippi, to-wit:

Lot 363, Section D Revised Plan Carriage Hills Subdivision in Sections 23, and 24, Township 1 South, Range 8 West, City of Southaven, DeSoto County, Mississippi, a plat appearing of record in Plat Book 5, Pages 4-5 in the Office of the Chancery Clerk of DeSoto County, Mississippi. Said property is situated at 965 Boulder Cove, Southaven, Mississippi.

3. That Loftis acquired title to said property by Special Warranty Deed from Manufacturers and Traders Trust Company as Trustee by its attorney in fact, Conti Mortgage Corporation, said deed dated October 5, 2000, filed for record on October 31, 2000 at 12:54 p.m., and recorded in Deed Book 381, Page 794, in the office of the Chancery Clerk of DeSoto County, Mississippi.

4. That title to said property was obtained by Manufacturers and Traders Trust Company by virtue of foreclosure of a Deed of Trust made and executed by Michael Wayne Hale to Webster C. Jordan, Jr., Trustee for First Greensboro Home Equity, Inc., said Deed of Trust dated July 11, 1996, filed for record on August 1, 1996, at 2:06 p.m., and recorded in Real Estate Trust Deed Book 846, Page 352, in said Chancery Clerk's office. Said Deed of Trust was assigned by First Greensboro Home Equity, Inc. to Conti Mortgage Corporation by Assignment of note and deed of trust filed for record on April 25, 1997, at 2:31 p.m., and recorded in Real Estate Trust Deed Book 901, Page 767, in the office of the Chancery Clerk of DeSoto County, Mississippi. The Deed of Trust was then assigned by Conti Mortgage Corporation to Manufacturers and Traders Trust

Company, Trustee for Securitization Series 1996 Agreement dated August 20, 1996, said Assignment filed for record on April 25, 1997, at 2:31 p.m., and recorded in Real Estate Trust Deed Book 901, Page 768, in said Chancery Clerk's office.

5. That John C. Morris, III was appointed Substitute Trustee by Substitution of Trustee Agreement dated February 29, 2000, executed by Manufacturers and Traders Trust Company as Trustee by its attorney in fact, Conti Mortgage Corporation, as per attached Power of Attorney, said instrument recorded on April 10, 2000, at 12:07 p.m., and recorded in Trust Deed Book 1198, Page 703, in said Chancery Clerk's office.

6. That the said John C. Morris, III, in his capacity as Substitute Trustee foreclosed the aforementioned Deed of Trust and conveyed title to said property to Manufacturers and Traders Trust Company, as Trustee by its attorney in fact, Conti Mortgage Corporation, by Substitute Trustee's Deed dated June 28, 2000, filed for record at 11:01 a.m. on July 10, 2000, and recorded in Deed Book 375, Page 639, in said Chancery Clerk's office.

7. That the property was subsequently conveyed by Manufacturers and Traders Trust Company as Trustee to Rose B. Loftis by Special Warranty Deed dated October 5, 2000, filed for record on October 31, 2000, at 12:54 p.m., and recorded in Deed Book 381, Page 794, in the office of the Chancery Clerk of DeSoto County, Mississippi.

8. That concurrent with the execution and delivery of said Special Warranty Deed, Rose B. Loftis gave a Deed of Trust to Ron Morrison as Trustee for Impact Funding Corporation dated October 5, 2000, filed for record at 12:54 p.m. on October 31, 2000, and recorded in Real Estate Trust Deed Book 1260, Page 496, in said Chancery Clerk's office. The said Rose B. Loftis also executed another Deed of Trust to P. J. Falgout, Trustee for Concord Acceptance Corporation dated

October 5, 2000, filed for record at 12:55 p.m. on October 31, 2000, and recorded in Real Estate Trust Deed Book 1260, Page 505, in said Chancery Clerk's office.

9. That on September 17, 2001, Rose B. Loftis executed a Deed of Trust to L. Scott Pickle, Trustee for Merchants and Farmers Bank, which was recorded on October 15, 2001, at 4:22 p.m., in Real Estate Trust Deed Book 1394, Page 261, in said Chancery Clerk's office. The proceeds from the loan secured by this Deed of Trust were used to pay off the Deed of Trust in favor of Concord Acceptance Corporation recorded in Book 1260, Page 505, in said Chancery Clerk's office.

10. That Loftis' title, as owner of the property, is defective in the following respects, to-wit:

- A. The Deed of Trust that was foreclosed was assigned to Manufacturers and Traders Trust Company as Trustee for Securitization Series 1996 Agreement dated August 20, 1996. The record indicates that there was no recorded Trust Agreement or Memorandum or Certificate of Trust of record at the time of said transfer as required by §91-9-1 through §91-9-9 of the *Mississippi Code of 1972*, and the Assignment was not notarized.
- B. The instrument appointing the Substitute Trustee recites Manufacturer and Traders and Trust Company as Trustee by its attorney in fact, Conti Mortgage Corporation.
- C. The instrument appointing John C. Morris, III as Substitute Trustee, as well as the Substitute Trustee's Deed refers to Manufacturer and Traders Trust Company as Trustee rather than Manufacturers and Traders Trust Company. Also the Power of Attorney referred to herein recites "Manufacturers and Traders Trust Company."

D. The Deed of Trust executed concurrent with the Deed of Trust which was foreclosed but filed subsequent to the foreclosed Deed of Trust and purportedly extinguished by the foreclosure has not been cancelled of record.

E. The Substitute Trustee's Deed from John C. Morris, III, Substitute Trustee, to Manufacturers and Traders Trust Company as Trustee by its attorney in fact, Conti Mortgage Corporation, dated June 20, 2000, filed July 10, 2000, at 11:01 a.m. and recorded in Real Estate Trust Deed Book 375, Page 639 in said Chancery Clerk's office is defective in that it fails to recite the second Assignment to Manufacturers and Traders Trust Company, and it conveys the property to Manufacturer and Traders Trust Company, and the correct name of said entity is Manufacturers and Traders Trust Company.

11. That the parties hereto derive their title from a common source and it is not necessary to derraing title to the property which is the subject of this Complaint.

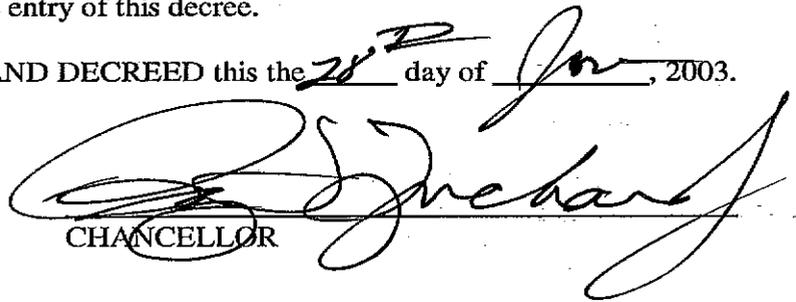
12. That Plaintiff Loftis has no adequate remedy at law and seeks to perfect the title to subject property through this Complaint by making all interested and affected parties defendant to this action and requesting the Court to correct the errors contained in the prior documents by judicially reforming said instruments, and further, that the Court quiet and confirm title to said real estate in the Plaintiff Loftis subject only to the outstanding Deed of Trust in favor of Impact Funding Corporation and Merchants and Farmers Bank.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that this Court hereby enters its decree judicially reforming the errors contained in the documents described herein and quieting and confirming title to said real estate described in the Complaint to Plaintiff Loftis subject

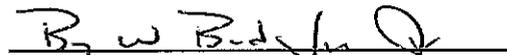
to the security interest held by Impact Funding Corporation and Merchants and Farmers Bank under the Deeds of Trust described therein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Chancery Clerk of DeSoto County, Mississippi, be and he is hereby requested and directed to file this decree in the appropriate deed records in his office and to make the appropriate marginal notations on the face of the recorded instruments affected by the entry of this decree.

SO ORDERED, ADJUDGED AND DECREED this the 28th day of Jan, 2003.


CHANCELLOR

Presented by:


Barry W. Bridgforth, Jr. (MSB #9797)