

COMMONWEALTH OF KENTUCKY
LETCHER CIRCUIT COURT
22-CI-_____

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Wells Fargo Bank, N.A.
3476 Stateview Boulevard
Fort Mill, South Carolina 29715

PLAINTIFF

vs.

DEFENDANTS

[REDACTED]

Electronically filed

IN REM COMPLAINT FOR FORECLOSURE

JURISDICTION AND VENUE

1. The Court has jurisdiction over this action because the Court and the property that is the subject of this action are situated in the same county.
2. Pursuant to KRS 454.210, the long-arm jurisdiction of this court is hereby invoked as to any defendants residing outside of the Commonwealth of Kentucky.

FIRST CLAIM FOR RELIEF

3. Plaintiff is entitled to enforce the promissory note (the "Note") executed by [REDACTED]
[REDACTED] A copy of the Note is attached as an exhibit.

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4. [REDACTED] defaulted under the obligations of the Note by, among other things, failing to pay the required monthly payments of principal and interest.
5. Plaintiff has satisfied all conditions precedent and declared the entire debt referenced above due and payable. The current principal amount due is \$51,808.21, plus interest on the outstanding principal balance at a rate of 5.5% per annum from May 1, 2021 until paid, plus late fees, costs, attorney's fees, and other advances made pursuant to the terms of the Note.
6. Plaintiff, upon information and belief, suggests that [REDACTED] is deceased. Accordingly, Plaintiff is not seeking a personal judgment against the decedent's estate, if any, at this time but, instead, is only seeking to enforce its security interest against the subject property.

SECOND CLAIM FOR RELIEF

7. Plaintiff incorporates the allegations of the First Claim for Relief as if fully set forth herein.
8. The mortgage executed by [REDACTED] (deceased) (hereinafter referred to as "Mortgagors") was given to secure payment of the above-described Note. A copy of the Mortgage is attached as an exhibit.
9. The Mortgage was recorded August 18, 2017 as Mortgage Book [REDACTED] Page [REDACTED] Letcher County, Kentucky records. Except for real estate taxes and assessments, the Mortgage constitutes a valid first lien against the real property commonly known as [REDACTED] [REDACTED] a legal description for which is provided in the attached Mortgage (hereinafter referred to as the "Real Property").

10. The terms and conditions of the Mortgage have been broken and become absolute, and the Plaintiff has declared the entire balance due and payable. All conditions precedent to Plaintiff's ability to enforce the mortgage have been satisfied, and Plaintiff is entitled to have the property sold.
11. The Plaintiff's Mortgage enabled the purchase of the Real Property by Mortgagors and is a purchase money mortgage. As a purchase money mortgage, a claim of dower is barred in this action by KRS 392.040(1) and the spouse, known or unknown, of any Mortgagor or present owner, is not a necessary party to this action merely by virtue of marriage to a Mortgagor or present owner.
12. The State and County have an interest in the Real Property by virtue of any County real estate taxes or assessments; and if the Real Property is located in a City that has real estate taxes or assessments, then the City has an interest in the Real Property by virtue of any City real estate taxes or assessments. Plaintiff acknowledges that all current taxes are the first and best lien on the Real Property.
13. If the City or County is named as a defendant in this cause of action, then it may have an additional interest by virtue of unpaid or delinquent real estate taxes or assessments; if neither is named, then there are no delinquent taxes due and owing to the County or City.
14. If there is a manufactured home located on the Real Property, Plaintiff asserts claims of an equitable lien on the manufactured home, a security interest by estoppel, and unjust enrichment against the Mortgagor(s), as the consideration for the transaction of the parties was with the mutual understanding and intent for the mortgage to encumber the principal residence on the Real Property. If the manufactured home is present on the Real Property, the manufactured home and the Real Property shall be sold together as a whole,

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- and the Master Commissioner shall be authorized to apply for a Vehicle Identification Number (VIN) and Certificate of Title transferring title to the purchasers.
15. The Real Property cannot be divided without materially impairing its value and the value of the interest of all parties hereto, and as a result the Real Property should be sold as a whole.
 16. Defendant Unknown heirs, devisees, legatees, beneficiaries of [REDACTED] and their unknown creditors; the unknown executor, administrator, or personal representative of the Estate of [REDACTED] may also have or claim an interest in the Real Property by virtue of the laws of intestacy. Said interest is junior and inferior to that of the Plaintiff's lien.
 17. A title examination reveals that the other persons named as Defendants in this action may also have or claim to have an interest in the subject property. Said interests are junior and inferior to that of Plaintiff, with the exception of ad valorem taxes. Property Owner(s) acquired title to the Property under a survivorship deed. On information and belief, [REDACTED] died on October 15, 2019 and pursuant to the survivorship clause in the vesting deed all rights and interest of [REDACTED] passed to [REDACTED]. For this reason, Plaintiff has not named the heirs of the Deceased as defendants.
 18. To the best of Plaintiff's knowledge there are no liens or encumbrances against the Real Property other than those set forth in this Complaint.
 19. Plaintiff has referred its claims to counsel who are not its regularly salaried employees and pursuant to the terms of the note and mortgage and KRS 411.195, Plaintiff is entitled to recover reasonable attorneys' fees.

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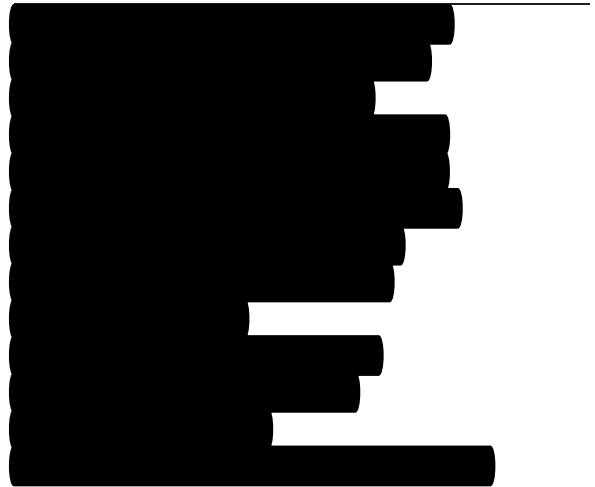
WHEREFORE, Plaintiff prays for relief as follows:

20. Plaintiff requests a finding that [REDACTED] is deceased and title has vested in the remaining title holding defendants named herein by virtue of said death.
21. An *in rem* Judgment in the principal sum of \$51,808.21, plus interest from May 1, 2021 at the rate of 5.5% per annum until paid, plus late fees, costs (including but not limited to documentary evidence, abstracts and title reports), attorney's fees, and other advances made pursuant to the terms of the Note and Mortgage.
22. Judgment that Plaintiff's Mortgage is a valid first lien on the Real Property, subject only to ad-valorem taxes.
23. Foreclosure of Plaintiff's Mortgage, and a Court ordered public sale of the Real Property, pursuant to law, free and clear of all liens, claims or interests.
24. Payment of Plaintiff's lien and judgment out of the proceeds of the Court ordered sale.
25. That all Defendants identify their liens or interest in the Real Property or forever be barred from asserting a claim against the Real Property.

26. That Plaintiff be awarded any and all other relief which this Court deems just, fair and equitable.

Respectfully submitted,

/s/ David E. Johnson

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Attorney for Plaintiff