NOTICE OF SUBSTITUTE TRUSTEE'S SALE

FILED
TERRI ROSS
COUNTY CLERK
2020 NOV 20 AM 10:55
UPSHUR COUNTY, TX.
BY

STATE OF TEXAS *

COUNTY OF UPSHUR *

Notice is hereby given that, whereas on the 3rd day of November, 2006, BESSIE LEE VARNER, Grantor, conveyed to LARRY BOLTON, Trustee for the benefit of AUSTIN BANK, TEXAS N.A., the Lender, certain property situated in Upshur County, Texas, to secure the payment of one certain note therein described, which Texas Home Equity Deed of Trust (Security Instrument) is recorded on December 7, 2006, under County Clerk's file number 200611041, at Volume 706, Page 463, Official Public Records of Upshur County, Texas, as modified by that Renewal, Extension and Modification Agreement (Promissory Note and Deed of Trust), recorded at Vol. 798, Page 612, of the Official Public Records of Upshur County, Texas (Instrument No. 200803362) on April 18, 2008. to which record reference is hereby made to more fully show the wording and effect of such instruments and the property covered by it; and whereas the said Texas Home Equity Deed of Trust (Security Instrument) specifically authorizes the appointment of a Substitute Trustee by the beneficiary and Lender of the said Deed of Trust, and whereas by authority of the said Texas Home Equity Deed of Trust (Security Instrument), AUSTIN BANK TEXAS, N.A., as holder thereunder, did on the 6th day of October, 2020, appoint me, DONALD W. COTHERN as Substitute Trustee, which Appointment of Substitute Trustee is recorded under County Clerk's file number 202007520, on October 19, 2020, in the Official Public Records of Upshur County, Texas, and whereas the said BESSIE LEE VARNER is deceased, and the

said BESSIE LEE VARNER and the ESTATE OF BESSIE LEE VARNER, Deceased, have made default in the payment of the note described in such instruments; and whereas the said beneficiary and Lender, AUSTIN BANK TEXAS, N.A.; has requested me to enforce such trust; and this Notice is pursuant to that certain Expedited Order entered on November 10, 2020, in Cause No. 20PR00007, in the County Court of Upshur County, in the ESTATE OF BESSIE LEE VARNER, Deceased, a copy of which Expedited Order is attached hereto as Exhibit "A" and made a part hereof for all purposes.

NOW, THEREFORE, I, DONALD W. COTHERN, Substitute Trustee as aforesaid, hereby give notice that I will accordingly, after due posting of this Notice as required by such Texas Home Equity Deed of Trust (Security Instrument), sell on **Tuesday, January 5, 2021** (that being the first Tuesday of said month) at public auction to the highest bidder for cash in the area officially designated for foreclosure sales at the Upshur County Courthouse in Gilmer, Texas, between the hours of 10:00 o'clock A.M. and 4:00 o'clock P.M. of that day (the earliest time at which such sale will begin being 10:00 o'clock A.M., and not later than three hours thereafter), the property described in the Texas Home Equity Deed of Trust (Security Instrument) referenced above, an described as follows:

> Commonly known as 100 PR 3233, Big Sandy, Upshur County, Texas 75755, with the following legal description:
>
> All that certain 7.4 acres of land lying in the J.B. B. Davenport Grant, Abstract No. 1, Upshur County, Texas, and being out of an original 19.2 acre tract in Block No. 20 of the Davenport Partition, and better described as follows:
>
> BEGINNING at a stake in the center of a public road at the SEC of the C. D. Hewitt 3 acre track, and being the NEC of the land once owned by Neal Mitchell,
>
> THENCE S 88 deg W 657 feet with the SBL of the Hewitt 3 acre track to the SWC of same, and corner being in the EBL of the Lida Stephens track,
>
> Thence S 00 deg 45 min W 327.5 feet with the EBL of said Lida Stephens track to the

SEC of same,

THENCE S 88 deg 45 min W 222 feet with the SBL of said track to a stake in said line at the NEC of the Frank Still track,

THENCE S 01 deg 27 min E 113.3 feet with the EBL of said Still track to a stake for corner,

THENCE East 874 feet with a line to a corner in the EBL of the Neal Mitchell track, and in the center of a public road,

THENCE North 470 feet with said line and road to the place of beginning, and containing 7.4 acres.

The Foreclosure Sale will be conducted as a public auction and the Property will be sold to the highest bidder for cash, except that Austin Bank, Texas N.A.'s bid may be by credit against the indebtedness secured by the lien of the Texas Home Equity Deed of Trust (Security Instrument).

If Austin Bank, Texas N.A. passes the Foreclosure Sale, notice of the date of any rescheduled foreclosure sale will be reposted and refiled in accordance with the posting and filing requirements of the Texas Home Equity Deed of Trust (Security Instrument) and the Texas Property Code.

The Foreclosure Sale will be made expressly subject to any title matters set forth in the Texas Home Equity Deed of Trust (Security Instrument), but prospective bidders are reminded that by law the Foreclosure Sale will necessarily be made subject to all prior matters of record affecting the Property, if any, to the extent that they remain in force and effect and have not been subordinated to the Texas Home Equity Deed of Trust (Security Instrument). For the avoidance of doubt, the Foreclosure Sale will not cover any part of the Property that has been released of public record from the lien and/or security interest of the Texas Home Equity Deed of Trust

(Security Instrument) by Austin Bank, Texas N.A. Prospective bidders are strongly urged to examine the applicable property records to determine the nature and extent of such matters, if any. Pursuant to section 51.009 of the Texas Property Code, the Property will be sold **"AS IS," without any expressed or implied warranties, except as to the warranties (if any) provided for under the Deed of Trust**. Prospective bidders are advised to conduct an independent investigation of the nature and physical condition of the Property. Pursuant to section 51.0075(a) of the Texas Property Code. Substitute Trustee reserves the right to set further reasonable conditions for conducting the Foreclosure Sale. Any such further conditions shall be announced before bidding is opened for the first sale of the day held by Substitute Trustee.

Pursuant to Section 51.002(i) of the *Texas Property Code*, I advise you of the following:

Assert and protect your rights as a member of the armed forces of the United States. If you are or your spouse is serving on active military duty, including active military duty as a member of the Texas National Guard or the National Guard of another state or as a member of a reserve component of the armed forces of the United States, please send written notice of the active duty military service to the sender of this notice immediately.

EXECUTED this 19th day of November 2020.

DONALD W. COTHERN, Substitute Trustee

Property Address:
100 PR 3233
Big Sandy, Upshur County, Texas 75755

Substitute Trustee's address:

Donald W. Cothern
2320 Dueling Oaks Drive
Tyler, Texas 75703
Phone:903-579-7531
Email: dcothern@tyler.net

CAUSE NO. 20PR00007

IN RE: ORDER FOR FORECLOSURE CONCERNING 100 PR 3233 BIG SANDY, TEXAS 75755 UNDER TEX. R. CIV. P. 736	§	IN THE COUNTY COURT OF
PETITIONER:	§	UPSHUR COUNTY, TEXAS
AUSTIN BANK, TEXAS N.A.	§	
RESPONDENT[S]:	§	
AUSTIN BANK, TEXAS N.A., TEMPORARY ADMINISTRATOR OF THE ESTATE OF BESSIE LEE VARNER, DECEASED	§	

Order Granting Application for an Expedited Order under Rule 736 on a TEX. CONST. art. XVI, § 50(a)(6) Home Equity Loan

A hearing was held on November 9, 2020, on the Application for an Expedited Order Under Rule 736 of the Texas Rules of Civil Procedure filed by Petitioner Austin Bank, Texas N.A.("Austin Bank"). Prior notice of the hearing was given in accordance with T.R.Civ.P. 736.6 to Respondent Austin Bank, as Temporary Administrator of the Estate of Bessie Lee Varner, Deceased, and to Sherry Varner, an occupant living at 100 PR 3233, Big Sandy, Texas 75755, and a person having filed a response to the Application of Petitioner, and to All Occupants, 100 PR 3233, Big Sandy, Texas 75755. Austin Bank, as Petioner, and as the Respondent. appeared by and through its counsel of record. Respondent Sherry Varner appeared in person *Pro Se.* The Court, having considered the evidence presented, including the Affidvit of facts filed by Petitioner in support of its Application, and the evidence of the witnesses, and the argument of counsel, finds that

EX. "A"

the Application of Petitioner Austin Bank should be GRANTED. The Court further finds as follows:

1. The Application of Petitioner Austin Bank complies with the requirements of Tex. R. Civ. P. 736.1

2. The name and last known address of each Respondent subject to this Order is Austin Bank, Texas N.A., Temporary Administrator of the Estate of Bessie Lee Varner, Deceased, whose address is 3400 West Marshall Ave, Longview, Texas 75604, and who waived service of citation and notice of hearing by a written waiver filed of record in this proceeding; and ALL OTHER OCCUPANTS OF 100 PR 3233, Big Sandy, Texas 75755; and Sherry Varner, 100 PR 3233, Big Sandy, Texas 75755, a person having filed a written response to the Application.

3. The property that is the subject of this foreclosure proceeding is commonly known as 100 PR 3233, Big Sandy, Upshur County, Texas 75755, with the following legal description:

All that certain 7.4 acres of land lying in the J.B. B. Davenport Grant, Abstract No. 1, Upshur County, Texas, and being out of an original 19.2 acre tract in Block No. 20 of the Davenport Partition, and better described as follows:

BEGINNING at a stake in the center of a public road at the SEC of the C. D. Hewitt 3 acre track, and being the NEC of the land once owned by Neal Mitchell,

THENCE S 88 deg W 657 feet with the SBL of the Hewitt 3 acre track to the SWC of same, and corner being in the EBL of the Lida Stephens track,

Thence S 00 deg 45 min W 327.5 feet with the EBL of said Lida Stephens track to the SEC of same,

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THENCE S 01 deg 27 min E 113.3 feet with the EBL of said Still track to a stake for corner,

THENCE East 874 feet with a line to a corner in the EBL of the Neal Mitchell track, and in the center of a public road,

THENCE North 470 feet with said line and road to the place of beginning, and containing 7.4 acres.

4. The lien to be foreclosed is indexed or recorded at Vol. 706, Page 463, of the Official Public Records of Upshur County, Texas (Instrument No. 200611041), filed on December 7, 2006, as modified by that Renewal, Extension and Modification Agreement (Promissory Note and Deed of Trust), recorded at Vol. 798, Page 612, of the Official Public Records of Upshur County, Texas (Instrument No. 200803362) filed on April 18, 2008.

5. The material facts establishing Respondent's default and Petitioner's right to foreclose its Lien based on a default in payments are alleged in Petitioner's Application and in the supporting Affidavit setting forth those facts. Those facts are adopted by the Court and incorporated by reference in this Order.

6. Based on the evidence presented at the hearing, no Respondent subject to this Order is protected from Foreclosure by the Service's Civil Relief Act, 50 U.S.C. App. § 501 et. seq.

7. Therefore, the Court grants Petitioner's Application under Tex.R.Civ.P. 736, et. seq. and Petitioner may proceed with foreclosure of the property described above in accordance with applicable law and the Texas Home Equity Real Estate Note Home Equity Promissory Note and the Texas Home Equity Deed of Trust sought to be foreclosed.

8. This order is not subject to a motion for rehearing, a new trial, a bill of review, or an appeal. Any challenge to this Order must be made in a separate, original proceeding filed in accordance with Tex.R.Civ.P. 736.11.

SO ORDERED AND SIGNED this 10 day of November, 2020.

JUDGE PRESIDING

FILED
UPSHUR
COUNTY CLERK

NOV 10 2020 10:53 A.M.

UPSHUR COUNTY, TX.
BY _____
DEPUTY