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Page: 1 of 12 Fee: \$ 25.00

Bk: 0313 Pg: 5598



Deputy pk

After recordation, return Judgment by Default
Against Defendant PNC Financial Services
Group, Inc. and Findings of Fact and
Conclusions of Law to the following
address:

✓ Christopher D. Jaime, Esq.
Maupin, Cox & LeGoy
4785 Caughlin Parkway
Reno, NV 89519

**JUDGMENT BY DEFAULT
AGAINST DEFENDANT PNC FINANCIAL SERVICES GROUP, INC.
AND FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Pursuant to NRS Section 239B.030, the undersigned
hereby affirms that this document submitted for
recording does not contain the social security number
of any person.

Signature of Declarant or Agent



Honorable Gregg W. Zive
United States Bankruptcy Judge

Entered on Docket
March 18, 2013

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(775) 827-2000 (telephone)/(775) 827-2185 (facsimile)
Attorneys for Plaintiff OneWest Bank, FSB

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

IN RE:

JERRY GREENWOOD, dba
GREENWOOD EXCAVATING, and
EUGENIA GREENWOOD, aka GINA
GREENWOOD, dba GREENWOOD
ENTERPRISES,

Case No. BK-09-53338-gwz
(Chapter 7)

Debtors.

ONEWEST BANK, FSB,

Adv. No. 12-05085-gwz

Plaintiff,

v.

**JUDGMENT BY DEFAULT AGAINST
DEFENDANT PNC FINANCIAL
SERVICES GROUP, INC. AND FINDINGS
OF FACT AND CONCLUSIONS OF LAW**

PNC FINANCIAL SERVICES GROUP,
INC., a Pennsylvania corporation, as
successor and/or successor in interest to
NATIONAL CITY BANK, ANGELIQUE
L.M. CLARK, in her capacity as Chapter 7
Trustee,

Hearing Date: March 13, 2013
Hearing Time: 10:00 a.m.

Defendants.

I certify that this is a true copy.

Attest: C. Youngblood 3/19/13
Deputy Clerk, U.S. Bankruptcy Court

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1 Upon the *Motion for Judgment by Default Against Defendant PNC Financial Services Group,*
2 *Inc. and Findings of Fact and Conclusions of Law* (“Default Judgment Motion”) filed by Plaintiff
3 OneWestBank, FSB (“OWB”) and based upon the statements of counsel and findings and conclusions
4 of the Court stated on the record in open court at the time of the hearing on the Default Judgment
5 Motion, all of which are incorporated herein by this reference, due and proper notice of the Default
6 Judgment Motion having been given, pursuant to Fed. R. Civ. Proc. 55(b) made applicable by Fed.
7 R. Bankr. Proc. 7055, and good cause appearing;

8
9 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that a Default Judgment shall
10 be and hereby is entered against Defendant PNC Financial Services Group, Inc. (“PNC”), its
11 predecessors, successors, assigns, parent, subsidiaries, and affiliates, who has failed to answer or
12 otherwise appear and respond to the *Complaint to Determine Priority of Liens* (“Complaint”) filed
13 by OWB on November 20, 2012.

14
15 Pursuant to Fed. R. Evid. 201, the Court takes judicial notice of the dockets in the above-
16 captioned adversary proceeding, in the underlying Chapter 7 case captioned In re Greenwood, Case
17 No. 09-53338-gwz (the “Chapter 7 Case”), and in the related adversary proceeding captioned
18 Angelique L.M. Clark, Plaintiff, v. OneWest Bank, FSB, Defendant, Adversary No. 11-05038-gwz
19 (the “2011 Adversary Proceeding”). See U.S. v. Wilson, 631 F.3d 118, 119 (9th Cir. 1980) (citations
20 omitted); Ins. Co. of North America v. Hilton Hotels, Inc., 908 F. Supp. 809, 812 n. 1 (D. Nev. 1995),
21 aff’d, 110 F.3d 715 (9th Cir. 1997). Documents from each of the aforementioned dockets cited in the
22 Default Judgment Motion are admitted for purposes of the Default Judgment Motion. The court
23 further takes all well-pleaded facts in the Complaint as true for purposes of the Default Judgment
24 Motion. Metropolitan Life Ins. Co. v. Colon Rivera, 204 F. Supp. 2d 273, 274-275 (D. P.R. 2002);
25
26

1 see also *In re Home Restaurants, Inc.*, 285 F.3d 111, 114 (1st Cir. 2002). Based on all the foregoing,
2 together with the *Declaration of Rebecca Marks in Support of Motion for Judgment by Default*
3 *Against Defendant PNC Financial Services Group, Inc. With Findings of Fact and Conclusions of*
4 *Law* submitted with the Default Judgment Motion, which is also admitted for purposes of the Default
5 Judgment Motion, the Court makes the following Findings of Fact and Conclusions of Law:

7 I. BACKGROUND

8 This adversary proceeding involves real property located at 1123 Jo Lane, Gardnerville,
9 Douglas County, Nevada 89410 (the "Gardnerville Property"). The Gardnerville Property is
10 purported to be the residence of Jerry Greenwood and Eugenia Greenwood ("Greenwoods"). The
11 Greenwoods are currently debtors in the Chapter 7 Case. The Chapter 7 Case remains open and
12 pending before this Court.

14 This Court entered an *Order Approving Settlement of Litigation* ("Settlement Order") in the
15 2011 Adversary Proceeding on April 3, 2012. The Settlement Order approved a Settlement
16 Agreement ("Settlement Agreement") between OWB as the defendant in the 2011 Adversary
17 Proceeding and Angelique L.M. Clark as the trustee in the Chapter 7 Case ("Trustee") and plaintiff
18 in the 2011 Adversary Proceeding.

20 The Settlement Agreement and the Settlement Order establish and recognize, among other
21 things, that OWB holds a valid and perfected lien on the Gardnerville Property pursuant to a deed of
22 trust voluntarily executed by the Greenwoods as more particularly described and defined herein as
23 the "IndyMac DOT." Paragraph 17.b of the Settlement Agreement also recognized that OWB had the
24 "right to assert that [its] lien [on the Gardnerville Property] is superior to any other lien or interest
25 recorded against the [Gardnerville] Property pursuant to a theory of equitable subrogation or
26

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1 otherwise." Paragraph 19 of the Settlement Agreement also states that this Court "shall retain
2 jurisdiction to enforce, interpret and implement [the Settlement] Agreement." [Id.].

3 4 **II. FINDINGS OF FACT**

5 JURISDICTION AND VENUE

6 1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and 28 U.S.C.
7 § 157(b)(1). The Gardnerville Property remains property of the estate in the Chapter 7 Case pursuant
8 to 11 U.S.C. § 541(a) and, as such, remains subject to the exclusive jurisdiction of the Court pursuant
9 to 28 U.S.C. § 1334(e)(1).

10 2. This is an action to determine the priority of liens on the Gardnerville Property. This
11 is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (K) and (O) governed by Fed. Rule Bankr.
12 Proc. 7001(2). The Court may enter a final judgment in this adversary proceeding and OWB consents
13 to the entry of a final judgment.

14 3. Venue is proper in this Court pursuant to 28 U.S.C. § 1409.

15 SERVICE AND DEFAULT

16 4. OWB initiated this adversary proceeding on November 20, 2012, with the Complaint.

17 5. A *Summons and Notice of Scheduling Conference in an Adversary Proceeding*
18 ("Summons") issued on PNC on November 21, 2012, and PNC was duly served with the Summons
19 and a copy of the Complaint by certified mail as required by Fed. R. Bankr. Proc. 7004(h) on
20 November 21, 2012.

21 6. PNC failed to answer or otherwise appear and defend as required by law within the
22 time required by Fed. R. Bankr. Proc. 7012(a) and, accordingly, a *Default of Defendant PNC*
23 *Financial Services Group, Inc.* was entered on December 27, 2012.
24
25
26

1 THE PARTIES

2 7. OWB is a federal savings bank subject to the laws of the United States. On or about
3 July 11, 2008, IndyMac Bank, F.S.B. ("IndyMac") was closed by the Office of Thrift Supervision
4 ("OTS") and the Federal Deposit Insurance Corporation ("FDIC") was appointed as Receiver of
5 IndyMac. On the same date, the OTS chartered a new institution, IndyMac Federal Bank, FSB
6 ("IndyMac Federal"), and appointed the FDIC as Conservator. On or about March 19, 2009, OWB
7 became the servicer of IndyMac's loans when it acquired substantially all the assets and mortgage
8 servicing rights of IndyMac Federal from the FDIC, including the IndyMac Loan (as further described
9 and defined below) and the IndyMac DOT (as also further described and defined below). OWB
10 further succeeded to the rights of IndyMac Federal pursuant to an *Assignment of Deed of Trust*
11 recorded as document no. 757313 in the official records of Douglas County, Nevada.

12
13
14 8. National City Bank ("NCB") was a bank organized and existing under the laws of the
15 United States and/or the State of Ohio formerly operating and conducting business in the State of
16 Nevada and/or transacting business with Nevada residents including, but not limited to, the
17 Greenwoods. PNC is a financial services company organized and existing under the laws of the State
18 of Pennsylvania and owner of PNC Bank. In or about 2008, PNC acquired all of the assets of NCB
19 making PNC the successor to NCB and the successor under the deed of trust that NCB obtained on
20 the Gardnerville Property in 2006 defined and described hereinbelow as the "NCB DOT."
21

22 THE LIENS

23
24 9. On or about September 13, 2004, the Greenwoods executed a *Deed of Trust* in favor
25 of Countrywide Home Loans, Inc. ("Countrywide") to secure an obligation to Countrywide created
26 by a promissory note also dated on or about September 13, 2004, in the principal amount of \$550,000

1 (“Countrywide DOT”). The Countrywide DOT was recorded against the Gardnerville Property on
2 or about September 17, 2004, as document no. 0624375 in the official records of Douglas County.

3
4 10. On or about February 1, 2006, the Greenwoods executed a *Deed of Trust* in favor of
5 Countrywide to secure another obligation to Countrywide created by a Home Equity Line Agreement
6 and Disclosure Statement dated on or about February 1, 2006, in the principal amount of \$158,291
7 (“Countrywide HELOC DOT”). The Countrywide HELOC DOT was recorded against the
8 Gardnerville Property on or about February 16, 2006, as document no. 0668046 in the official records
9 of Douglas County, Nevada.

10
11 11. The Countrywide DOT and the Countrywide HELOC DOT were the senior and
12 priority deeds of trust recorded against the Gardnerville Property at the respective times they were
13 recorded in Douglas County and also at the time they were satisfied in full by IndyMac Loan (as
14 described and defined below). The underlying obligations secured by the Countrywide DOT and the
15 Countrywide HELOC DOT are hereafter referred to collectively as the “Countrywide Debt.”

16
17 12. On or about June 20, 2006, the Greenwoods executed a *Deed of Trust* in favor of
18 IndyMac (the “IndyMac DOT”) to secure their obligation to IndyMac created by an Adjustable Rate
19 Note also dated on or about June 20, 2006, in the original principal amount of \$691,000 (the
20 “IndyMac Loan”). The IndyMac DOT was initially recorded against the Gardnerville Property on or
21 about June 28, 2006, as document no. 20060628-0001318 in the official records of Clark County,
22 Nevada.

23
24 13. On or about June 28, 2006, proceeds from the IndyMac Loan were used to pay off and
25 fully satisfy the Countrywide Debt together with the liens then existing and associated with the
26 Countrywide Debt with \$587,324.84 being paid to Countrywide for payoff and satisfaction in full of

1 the Countrywide DOT and \$95,538.24 being paid to Countrywide for payoff and satisfaction in full
2 of the Countrywide HELOC DOT.

3 14. IndyMac was promised repayment of the IndyMac Loan and expected to receive a lien
4 on the Gardnerville Property with the same senior and priority position as the Countrywide DOT and
5 the Countrywide HELOC DOT.
6

7 15. Jerry Greenwood executed a Quitclaim Deed of his interest in the Gardnerville
8 Property on or about July 14, 2006, which Quitclaim Deed was recorded in the official records of
9 Douglas County, Nevada, as document 0682298 on or about August 15, 2006.
10

11 16. On or about July 12, 2006, Eugenia Greenwood obtained a home equity line of credit
12 in the maximum amount of \$150,000 from NCB. Repayment of this obligation to NCB was secured
13 by a Deed of Trust which was recorded against the Gardnerville Property over one month later on or
14 about August 15, 2006, as document no. 0682299 in the official records of Douglas County, Nevada
15 ("NCB DOT").
16

17 17. The IndyMac DOT was re-recorded on the Gardnerville Property in the official records
18 of Douglas County, Nevada, as document no. 750908, on or about September 18, 2009.

19 18. But for the inadvertent recordation of the IndyMac DOT in Clark County in 2006 and
20 the re-recordation of the IndyMac DOT in Douglas County in 2009, the lien on the Gardnerville
21 Property created by the IndyMac DOT would be superior to the lien on the Gardnerville Property
22 created by the NCB DOT.
23

24 19. Equitable subrogation of the lien created by the IndyMac DOT to the lien(s) of
25 Countrywide created by the Countrywide DOT and the Countrywide HELOC DOT gives the lien
26 created by the IndyMac DOT and the IndyMac DOT the same senior and priority position on the

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1 Gardnerville Property as the liens created by the Countrywide DOT and the Countrywide HELOC
2 DOT and, therefore, gives the lien of OWB created by the IndyMac DOT and the IndyMac DOT
3 priority over the lien of PNC created by the NCB DOT and the NCB DOT.
4

5 20. Equitable subrogation of the lien created by the IndyMac DOT to the priority position
6 of the lien(s) created by the Countrywide DOT and the Countrywide HELOC DOT will not prejudice
7 PNC. NCB was aware of the IndyMac Loan, the IndyMac DOT, and that proceeds of the IndyMac
8 Loan were used to satisfy the Countrywide Loan in full when it made the NCB Loan to Eugenia
9 Greenwood. Additionally, the lien created by the NCB DOT would have in all events remained a
10 junior lien on the Gardnerville Property subject to the Countrywide DOT and the Countrywide
11 HELOC DOT if proceeds from the IndyMac Loan were not used to pay the Countrywide Debt in full.
12

13 III. CONCLUSIONS OF LAW

14 A. The Court has jurisdiction over this adversary proceeding and the parties hereto.

15 B. PNC was properly served with Summons and a copy of the Complaint as required by
16 Fed. R. Bankr. Proc. 7004(h).

17 C. PNC failed to appear or defend as required by law and, therefore, default pursuant to
18 Fed. R. Civ. Proc. 55(a), made applicable by Fed. R. Bankr. Proc. 7055, was properly entered against
19 PNC on December 27, 2012.
20

21 D. PNC's default is an admission of all facts well-pleaded in the Complaint and the Court
22 takes all facts alleged in the Complaint as recited in the above Findings of Fact as true for purposes
23 of the Default Judgment Motion.
24

25 E. Nevada recognizes the doctrine of equitable subrogation pursuant to which an entity
26 that satisfies an encumbrance may assume the same priority position as the holder of the satisfied

1 encumbrance. Houston v. Bank of America, 78 P.3d 71, 73 (Nev. 2003).

2 F. Nevada has also adopted the Restatement (Third) of Property, Mortgages, § 7.6, which
3 provides that a lender whose loan proceeds were used to pay the balance of a prior note is equitably
4 subrogated to the former lender's priority lien position so long as an intervening lienholder is not
5 materially prejudiced. American Sterling Bank v. Johnny Mgmt., LV, 245 P.3d 535, 538 (Nev.
6 2010).

7
8 G. OWB has and is entitled to exercise all rights, remedies, benefits and privileges of
9 IndyMac and/or IndyMac Federal with regards to the IndyMac DOT and the IndyMac Loan.

10
11 H. Proceeds from the IndyMac Loan were used to pay off the entirety of the Countrywide
12 Debt and thereby satisfy in full the obligation secured by the Countrywide DOT and the Countrywide
13 HELOC DOT.

14
15 I. PNC will not be prejudiced by equitable subrogation of the lien created by the
16 IndyMac DOT to the priority of the lien(s) created by the Countrywide DOT and the Countrywide
17 HELOC DOT.

18
19 J. The lien on the Gardnerville Property created by the IndyMac DOT shall be and hereby
20 is equitably subrogated to the priority position(s) of the lien(s) on the Gardnerville Property created
21 by the Countrywide DOT and Countrywide HELOC DOT which were paid in full by proceeds from
22 the IndyMac Loan.

23
24 K. The lien on the Gardnerville Property created by the IndyMac DOT and the IndyMac
25 DOT are superior to and have priority over the lien on the Gardnerville Property created by the NCB
26 DOT and the NCB DOT.

L. The lien on the Gardnerville Property created by the NCB DOT and the NCB DOT

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1 are junior to the lien on the Gardnerville Property created by the IndyMac DOT and the IndyMac
2 DOT.

3
4 M. These Findings of Fact and Conclusions of Law may be recorded with the Douglas
5 County Recorder and when so recorded shall be evidence that OWB holds a first priority deed of trust
6 on the Gardnerville Property pursuant to the IndyMac DOT.

7 N. OWB, its agents, representatives, successors, assigns, affiliates, parents, subsidiaries,
8 employees, trustees, officers and directors may foreclose on its equitably subrogated and senior
9 priority lien of the IndyMac DOT using judicial or non-judicial foreclosure and may further exercise
10 any and all other contractual, legal, and/or equitable remedies with respect to its subrogated lien on
11 the Gardnerville Property to the full extent permitted by any and all applicable agreements, contract,
12 rule, regulation and/or law.

13
14 O. To the extent any of the foregoing Conclusions of Law is more properly deemed a
15 Finding of Fact it may be so construed and to the extent any Finding of Fact may property be deemed
16 a Conclusion of Law it may be so deemed.

17
18 Submitted by:

19
20 MAUPIN, COX & LEGOY

21 By /s/ Christopher D. Jaime
22 Christopher D. Jaime, #4640
23 Attorneys for Plaintiff
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In accordance with LR 9021, counsel submitting this document certifies that the order accurately reflects the court's ruling and that (check one):

The court has waived the requirement set forth in LR 9021(b)(1).

No party appeared at the hearing or filed an objection to the motion.

I have delivered a copy of this proposed order to all counsel who appeared at the hearing, and any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below [list each party and whether the party has approved, disapproved, or failed to respond to the document]:

I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order.

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