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Page: 1 of 11 Fee: \$ 24.00

Bk: 0413 Pg: 3131



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APN: 1220-12-111-011

Recording requested by:  
Maupin, Cox & LeGoy

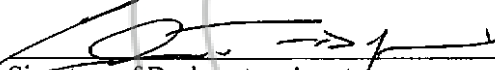
After recordation, return Stipulated Judgment  
as to Defendant Angelique L.M. Clark in her  
Capacity as Chapter 7 Trustee to the following  
address:

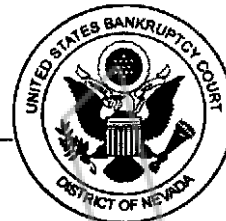
✓ Christopher D. Jaime, Esq.  
Maupin, Cox & LeGoy  
4785 Caughlin Parkway  
Reno, NV 89519

**STIPULATED JUDGMENT AS TO DEFENDANT  
ANGELIQUE L.M. CLARK IN HER CAPACITY AS CHAPTER 7 TRUSTEE**

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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  
April 08, 2013

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Christopher D. Jaime, Esq., #4640  
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Reno, NV 89520  
(775) 827-2000 (telephone)/(775) 827-2185 (facsimile)  
Attorneys for Plaintiff OneWest Bank, FSB

I certify that this is a true copy.

Attest:   
Deputy Clerk, U.S. Bankruptcy Court

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.

**STIPULATED JUDGMENT AS TO  
DEFENDANT ANGELIQUE L.M. CLARK  
IN HER CAPACITY AS CHAPTER 7  
TRUSTEE**

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,

(No Hearing Required)

Defendants.

By and through their respective undersigned counsel, Plaintiff OneWest Bank, FSB ("OWB")

BK: 0413  
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0021524 Page: 2 of 11



1  
2 and Defendant Angelique L.M. Clark in her capacity as the duly-appointed Chapter 7 Trustee  
3 ("Trustee") in the underlying Chapter 7 case of Jerry Greenwood, dba Greenwood Excavating, and  
4 Eugenia Greenwood, aka Gina Greenwood, dba Greenwood Enterprises, Debtors, Case No. BK-09-  
5 53338-gwz ("Chapter 7 Case") filed by Jerry Greenwood and Eugenia Greenwood ("Greenwoods")  
6 enter into this *Stipulated Judgment as to Defendant Angelique L.M. Clark in Her Capacity as Chapter*  
7 *7 Trustee* ("Stipulated Judgment") and in furtherance of this Stipulated Judgment represent and agree  
8 to the following set forth hereinbelow. Good cause appearing:

9  
10 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Judgment shall be and  
11 hereby is entered in favor of OWB and against the Trustee, the estate, the real property located at  
12 1123 Jo Lane, Gardnerville, Douglas County, Nevada 89410 (the "Gardnerville Property"), and the  
13 Greenwoods' interest in the Gardnerville Property.

14 Pursuant to Fed. R. Evid. 201, the Court takes judicial notice of the dockets in the above-  
15 captioned adversary proceeding, in the Chapter 7 Case, and in the related adversary proceeding  
16 captioned Angelique L.M. Clark, Plaintiff, v. OneWest Bank, FSB, Defendant, Adversary No. 11-  
17 05038-gwz (the "2011 Adversary Proceeding"). See U.S. v. Wilson, 631 F.3d 118, 119 (9th Cir.  
18 1980) (citations omitted); Ins. Co. of North America v. Hilton Hotels, Inc., 908 F. Supp. 809, 812 n.  
19 1 (D. Nev. 1995), aff'd, 110 F.3d 715 (9th Cir. 1997). The Trustee further admits all well-pleaded  
20 facts alleged in the *Complaint to Determine Priority of Liens* ("Complaint") filed in this adversary  
21 Proceeding on November 20, 2012. [Dkt. 1].

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23 Based on all the foregoing, the Court makes the following Findings of Fact and Conclusions  
24 of Law:



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**I. BACKGROUND**

This adversary proceeding involves the Gardnerville Property. The Gardnerville Property is purported to be the Greenwoods' residence. The Greenwoods are currently debtors in the Chapter 7 Case. The Chapter 7 Case remains open and pending before this Court.

On April 3, 2011, this Court entered an *Order Approving Settlement of Litigation* ("Settlement Order") in the 2011 Adversary Proceeding. The Settlement Order approved a Settlement Agreement ("Settlement Agreement") between OWB as the defendant and the Trustee as the plaintiff in the 2011 Adversary Proceeding. The Settlement Agreement and the Settlement Order establish and recognize, among other things, that OWB holds a valid and perfected lien on the Gardnerville Property pursuant to a deed of trust voluntarily executed by the Greenwoods as more particularly described and defined in the Settlement Agreement and herein as the "IndyMac DOT." Paragraph 17.b of the Settlement Agreement also recognizes that OWB had the "right to assert that [its] lien [on the Gardnerville Property] is superior to any other lien or interest recorded against the [Gardnerville] Property pursuant to a theory of equitable subrogation or otherwise." Paragraph 19 of the Settlement Agreement also states that this Court "shall retain jurisdiction to enforce, interpret and implement [the Settlement] Agreement." [Id.].

On March 19, 2013, the Court in this adversary proceeding entered judgment in favor of OWB and against Defendant PNC Financial Services Group, Inc., as successor and/or successor in interest to National City Bank ("PNC"), its predecessors, successors, assigns, parent, subsidiaries, and affiliates, pursuant to a *Judgment by Default Against Defendant PNC Financial Services Group, Inc. and Findings of Fact and Conclusions of Law* ("Judgment") [Dkt. 20] and an *Order Granting Motion for Judgment by Default Against Defendant PNC Financial Services Group, Inc. and Findings of*



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*Fact and Conclusions of Law* ("Order"). [Dkt. 19]. The Judgment and Order declare and establish that OWB holds the senior lien and deed of trust on the Gardnerville Property and that OWB's senior lien and deed of trust on the Gardnerville Property have priority over PNC's lien and deed of trust on the Gardnerville Property.

**II. FINDINGS OF FACT**

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and 28 U.S.C. § 157(b)(1). The Gardnerville Property has not been abandoned by the Trustee. The Gardnerville Property remains property of the estate in the Chapter 7 Case pursuant to 11 U.S.C. § 541(a) and, as such, remains subject to the exclusive jurisdiction of the Court pursuant to 28 U.S.C. § 1334(e)(1). As property of the estate in the Chapter 7 Case, the Gardnerville Property and the Greenwoods' interest in the Gardnerville Property are also vested in the Trustee.

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

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

SERVICE

4. OWB initiated this adversary proceeding by filing the Complaint on November 20, 2012.

5. A *Summons and Notice of Scheduling Conference in an Adversary Proceeding* ("Summons") issued on the Trustee on November 21, 2012 [Dkt. 6], and the Trustee was duly served



1  
2 with the Summons and a copy of the Complaint on November 21, 2012. [Dkt. 8].

3 6. The Trustee has not answered the Complaint or otherwise appeared and defended as  
4 required by law within the time required by Fed. R. Bankr. Proc. 7012(a). Nevertheless, the Trustee  
5 admits the well-pleaded facts in the Complaint.

6 THE PARTIES

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

18  
19 8. The Trustee is the duly appointed trustee in the Chapter 7 Case and, as such, is the  
20 representative of the estate in the Chapter 7 Case. The Trustee is named as a defendant because the  
21 Gardnerville Property and the Greenwoods' interest in the Gardnerville Property are vested in the  
22 Trustee as property of the estate that has not been abandoned.

23 THE LIENS

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  
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2 by a promissory note also dated on or about September 13, 2004, in the principal amount of \$550,000  
3 ("Countrywide DOT"). The Countrywide DOT was recorded against the Gardnerville Property on  
4 or about September 17, 2004, as document no. 0624375 in the official records of Douglas County.

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

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

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

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  
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Countrywide Debt with \$587,324.84 being paid to Countrywide for payoff and satisfaction in full of the Countrywide DOT and \$95,538.24 being paid to Countrywide for payoff and satisfaction in full of the Countrywide HELOC DOT.

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

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

16. On or about July 12, 2006, Eugenia Greenwood obtained a home equity line of credit in the maximum amount of \$150,000 from NCB. Repayment of this obligation to NCB was secured by a Deed of Trust which was recorded against the Gardnerville Property over one month later on or about August 15, 2006, as document no. 0682299 in the official records of Douglas County, Nevada ("NCB DOT"). PNC acquired the NCB DOT in or about 2008 making PNC the successor to NCB, under the NCB DOT.

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

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

19. Equitable subrogation of the lien created by the IndyMac DOT to the lien(s) of





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Countrywide created by the Countrywide DOT and the Countrywide HELOC DOT gives the lien created by the IndyMac DOT and the IndyMac DOT the same senior and priority position on the Gardnerville Property as the liens created by the Countrywide DOT and the Countrywide HELOC DOT and, therefore, gives the lien of OWB created by the IndyMac DOT and the IndyMac DOT priority over the lien of PNC created by the NCB DOT and the NCB DOT.

20. Equitable subrogation of the lien created by the IndyMac DOT to the priority position of the lien(s) created by the Countrywide DOT and the Countrywide HELOC DOT will not result in any prejudice to the Trustee because the lien created by the NCB DOT would have in all events remained a junior lien on the Gardnerville Property subject to the Countrywide DOT and the Countrywide HELOC DOT if proceeds from the IndyMac Loan were not used to pay the Countrywide Debt in full.

### III. CONCLUSIONS OF LAW

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

B. The Trustee was properly served with Summons and a copy of the Complaint as required by Fed. R. Bankr. Proc. 7004(b)(1).

C. The Trustee is authorized by law to bind the estate, the Gardnerville Property, and the Greenwoods' interest in the Gardnerville Property in all matters including, but not limited to, those alleged in the Complaint and those stated in this Stipulated Judgment.

D. Nevada recognizes the doctrine of equitable subrogation pursuant to which an entity that satisfies an encumbrance may assume the same priority position as the holder of the satisfied encumbrance. Houston v. Bank of America, 78 P.3d 71, 73 (Nev. 2003).

E. Nevada has also adopted the Restatement (Third) of Property; Mortgages, § 7.6, which



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provides that a lender whose loan proceeds were used to pay the balance of a prior note is equitably subrogated to the former lender's priority lien position so long as an intervening lienholder is not materially prejudiced. American Sterling Bank v. Johnny Mgmt., LV, 245 P.3d 535, 538 (Nev. 2010).

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

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

H. The Trustee and the estate will not be prejudiced by equitable subrogation of the lien created by the IndyMac DOT to the priority of the lien(s) created by the Countrywide DOT and the Countrywide HELOC DOT.

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

J. The lien on the Gardnerville Property created by the IndyMac DOT and the IndyMac DOT are superior to and have priority over the lien on the Gardnerville Property created by the NCB DOT and the NCB DOT.

K. The lien on the Gardnerville Property created by the NCB DOT and the NCB DOT are junior to the lien on the Gardnerville Property created by the IndyMac DOT and the IndyMac DOT.



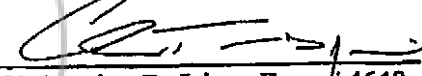
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L. These Findings of Fact and Conclusions of Law may be recorded with the Douglas County Recorder and when so recorded shall be evidence that OWB holds a first priority deed of trust on the Gardnerville Property pursuant to the IndyMac DOT.

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

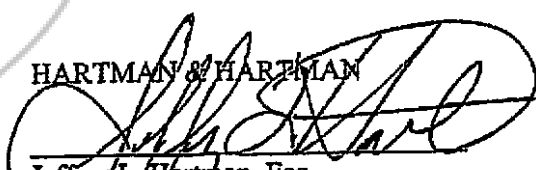
N. To the extent any of the foregoing Conclusions of Law is more properly deemed a Finding of Fact it may be so construed and to the extent any Finding of Fact may properly be deemed a Conclusion of Law it may be so deemed.

MAUPIN, COX & LeGOY

  
Christopher D. Jaime, Esq., # 4640  
Attorneys for OneWest

Dated: 4/4/13

HARTMAN & HARTMAN

  
Jeffrey L. Hartman, Esq.  
510 West Plumb Lane, Suite B  
Reno, NV 89509  
Attorneys for Trustees  
Executed with authority from and the  
Consent of the Trustee

Dated: 4/4/13

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