

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

U.S. Bank, NA as trustee relating to the  
Chevy Chase Funding, LLC Mortgage  
Backed Certificates, Series 2004-B,

Plaintiff,

vs.

Alyce F. Otto, individually; Alyce F. Otto,  
Trustee Under declaration of Trust of Alyce  
F. Otto dated November 17, 2009, TD Bank,  
NA; The United States of America, acting by  
and through its agency the Internal Revenue  
Service; Laura Kerhulas Giese, as Co-Trustee  
of the Theodore Ernest Kerhulas Trust Under  
Declaration of Trust dated May 25, 2004;  
Mark Warner Kerhulas, as Co-Trustee of the  
Theodore Ernest Kerhulas Trust Under  
Declaration of Trust dated May 25, 2004;  
Jackson L. Munsey, Jr.; Citibank, NA;

Defendants.

AND

Alyce F. Otto, Trustee Under Declaration of  
Trust of Alyce F. Otto dated November 17,  
2009,

Plaintiff,

vs.

Jackson L. Munsey, Jr.,

Defendant.

IN THE COURT OF COMMON PLEAS OF  
THE SEVENTH JUDICIAL CIRCUIT

DOCKET NO.: 2012-CP-42-3549 AND  
2012-CP-42-2874

**ORDER AS TO BOND AND JUDGMENT**

**RECEIVED**

MAR 11 2020

SC Court of Appeals

A hearing was held before me on October 29, 2019, in the above captioned matters. Present at the hearing were Alyce F. Otto, individually, Alyce F. Otto, Trustee Under Declaration of Trust of Alyce F. Otto dated November 17, 2009 (hereinafter "Otto"), and her counsel Max T. Hyde, Jr. and Samantha N. Larkins; Jackson L. Munsey, Jr. (hereinafter "Munsey") and his counsel Andrew Radeker; and David L. Walsh, counsel for Laura Kerhulas Giese and Mark Warner Kerhulas (hereinafter "Kerhulas"), as Co-Trustees of the Theodore Ernest Kerhulas Trust Under Declaration of Trust dated May 25, 2004. At the October 29, 2019 hearing, the Court heard testimony and received evidence as to Otto's Motion to Recover Bond and Enter Judgment.

On January 23, 2019, an additional Status Conference was held to dispose of the issues relating to the parties' proposed orders as to Bond and Judgment. After a thorough review of Otto's Motion, Kerhulas' Response, common and statutory law, testimony, evidence, and oral arguments presented, I find that Otto's Motion is granted, and the Otto Order is hereby amended as follows:

This Order relates to a revision of the judgment amount against Munsey pursuant to the Order entitled *Otto vs. Munsey* dated December 14, 2015, and the disbursement of the Appeal Bond pursuant to Order on Jackson L. Munsey, Jr.'s Motion to Alter or Amend dated April 19, 2016, following the appeal of the previous Foreclosure Order dated December 22, 2015 and subsequent foreclosure sale.

#### **FINDING OF FACTS AND CONCLUSIONS OF LAW**

On November 24, 2015, this Court held a hearing on the issues of foreclosure and a judgment as to *Otto v. Munsey*. On December 14, 2015, this Court issued an Order as to *Otto vs. Munsey*, which determined an amount due from Munsey to Otto as a result of Munsey's default on the parties' Contract for Deed. This amount was set forth on Exhibit A of the December 14, 2015 Order, later clocked on April 19, 2016, and attached here as "Exhibit A." In the Order as to

*Otto vs. Munsey*, the Court reserved the right to enter a supplemental order concerning the judgment amount after the Foreclosure Sale. The Foreclosure Sale was anticipated for February 2, 2016. Munsey appealed.

On January 13, 2016, this Court ordered that Munsey post an appeal bond in the amount of \$243,000.00 to secure payment of the “fair rental value” of the subject property and to pay for the cost of repair of potential waste to the property during the course of Munsey’s appeals according to S.C. Code Ann. Section 18-9-170, as amended.

On January 29, 2016, Munsey posted the bond of \$243,000.00, and by way of Affidavit of Understanding assured this Court that he would pay fair rental value for possession of the property, and refrain from committing waste.

On April 19, 2016, this Court ruled that the Appeal Bond currently on deposit with the Clerk of Court stood as bond for the entire case, and stayed the execution of both the *Otto* Order dated December 14, 2015 and the Order of Foreclosure dated December 22, 2015.

Munsey’s various appeals were unsuccessful. Munsey remains in default on the pleadings.

On November 1, 2018, Munsey surrendered possession of the property.

On August 5, 2019, the property was sold at the Foreclosure Sale to NVG Properties, LLC for \$783,000.00.

On August 28, 2019, *Otto* filed a Motion to Recover Bond and Enter Judgment.

**Amount Due as Judgment against Jackson L. Munsey, Jr.**

I find that the Order as to *Otto vs. Munsey* dated December 14, 2015, shall be amended according to “**Revised Exhibit A**,” attached hereto, to reflect the final judgment amount awarded to *Otto* for the debts Munsey accrued as a result of his default on the Contract for Deed. No debts accruing after November 1, 2018, when Munsey relinquished his possession of the property, shall

be factored into the computations of debts owed by Munsey. Therefore, Revised Exhibit A will summarize and set forth the Judgment amounts due to Otto from Munsey as follows:

First Mortgage

The “First Mortgage” shall be amended to reflect that since U.S. Bank, N.A. waived any right to a deficiency judgment against Otto, and that U.S. Bank, N.A. received the \$783,000.00 proceeds from the foreclosure sale, Otto shall not recover any First Mortgage deficiency from Munsey due under the Contract for Deed. The total judgment due set forth in the Otto Order dated December 14, 2015 was \$1,417,403.39. Without and subtracting the First Mortgage, the total judgment is \$233,952.39. See Revised Exhibit A.

Amounts Remaining Due and Payable

The “Second Mortgage,” “Third Mortgage,” “Carolina First Payments,” “Attorney Fees – Anthony,” “Attorneys Costs –Anthony,” “Returned Checks,” and “Funds in Trust” shall not be amended. See Revised Exhibit A.

Plus Judgment Interest

Using the balance of \$233,952.39 and the legal rate of interest on money decrees and judgments issued by the South Carolina Supreme Court each year compounded annually, from December 15, 2015 to January 14, 2020, the judgment interest is **\$89,922.44** reflecting a balance of \$323,874.83. See Revised Exhibit A.

Plus Greenspace Dues

On November 24, 2015, this Court found liability of Munsey to Otto of \$39,200.00 for the Greenspace monthly dues owed to that date. Munsey did not pay the dues ordered on November 24, 2015, and Munsey did not pay any continuing monthly Greenspace dues owed through November 1, 2018. The additional balance due to Greenspace of Fairview, LLC from November

24, 2015 through November 1, 2018, as a result of Munsey's default on the Contract for Deed is **\$18,000.00**.

Plus Attorney Fees and Costs

Since November 24, 2015, Otto has continued to incur attorney fees to pursue this action. Those additional fees include: attorney fees due to Haynesworth, Sinkler, Boyd, P.A. for their appellate representation (\$6,287.50), and attorney fees due to Hyde Law Firm, P.A. for their representation during this matter (\$18,395.72). The total additional attorney fees are **\$24,683.22**, and are hereby approved. Costs assessed by the Court of Appeals in favor of Alyce F. Otto are added in the amount of **\$2,500.00**.

Plus Fair Rental Value

On January 13, 2016, this Court ordered Munsey to post a bond of \$243,000.00 to stay the Foreclosure Order and the execution on the proposed money judgment to be entered. On January 29, 2016, Munsey filed an Affidavit of Undertaking and deposited the bond amount of \$243,000.00. The Affidavit assured the Court, under oath, that Munsey would not allow the property to suffer waste, and that Munsey would pay the reasonable rental value of the property during the pendency of his appeal.

On April 19, 2016, this Court ruled that no additional *supersedeas* bond was required to stay the Otto Order dated December 14, 2015 pending his appeal of the U.S. Bank N.A.'s Foreclosure Order. The Order as to *Otto v. Munsey* was amended to reflect that the Bond stood as bond for the entire case. All appeals filed by Munsey were denied and this Court's prior Orders were affirmed. The Appeal Bond remains as an asset available to satisfy the payment of Fair Rental Value and the Judgment in favor of Otto.

Pursuant to South Carolina Code, Section 18-9-170,

“[w]hen the judgment directs the sale of land to satisfy a mortgage thereon or other lien, the undertaking shall provide that in case the judgment appealed from be affirmed and the land be finally sold for less than the judgment debt and costs then the appellant shall pay . . . a reasonable rental value for the use and occupation of the land from the time of the execution of the undertaking to the time of the sale....”

S.C. CODE ANN. § 18-9-170 (2016).

The fair rental value of the property shall be determined to be \$2,510.00 per month. Munsey possessed the property during the pendency of his appeals for thirty three and a half (33.5) months from January 13, 2016 through November 1, 2018. Accordingly, Otto is owed the fair rental value of the property for Munsey’s possession during appeal totaling **\$84,085.00**.

#### DISPOSITION

The judgment amount due from Munsey to Otto is **\$453,143.05**. See Revised Exhibit A. This reflects the judgment previously awarded in Exhibit A dated December 14, 2015 (\$1,417,403.39), less the First Mortgage (-\$1,183,451.00), plus judgment interest through January 14, 2020 (\$89,922.44), plus additional Greenspace dues (\$18,000.00), plus additional Attorneys Fees (\$24,683.22), plus additional costs assessed by the Court of Appeals (\$2,500.00), plus Fair Rental Value of the property occupied by Munsey during the pendency of his appeal (\$84,085.00).

The Appeal Bond shall be disbursed directly from the Clerk of Court thirty (30) days after the date of this signed order as follows:

Attorney Fees and Costs shall be disbursed to the law firm earning the fees as attested in the total amount of \$40,078.22. The Clerk is directed to disburse by check as follows:

1. \$12,895.00 to The Anthony Law Firm, P.A.
2. \$8,787.50 to Haynesworth Sinkler Boyd, P.A. (Attorney fees plus costs assessed by the Court of Appeals)
3. \$18,395.72 to Hyde Law Firm, P.A.

The remaining Bond balance of **\$202,921.78** shall be paid to David Walsh, attorney of record for the Kerhulas creditors as partial satisfaction of the Kerhulas v. Otto Judgment docketed in case number 2012-CP-42-00014.

Considering the disposition of the Appeal Bond as a credit against that amount due Otto as is set forth on Revised Exhibit A, Otto shall have a remaining net judgment against Munsey in the amount of \$210,143.05.

**NOW, THEREFORE, I CONCLUDE AND IT IS ORDERED** that final Judgment shall be entered in favor of Alyce F. Otto and against Jackson Lee Munsey, Jr. in the amount of **\$210,143.05**.

**AND IT IS SO ORDERED.**

[Judge's Electronic Signature to Follow]

EXHIBIT A

First Mortgage	\$1,183,451.00
Second Mortgage	\$177,564.00
Third Mortgage	\$15,008.49
Carolina First Payments	\$11,052.00
Greenspace	\$39,200.00
Attorney Fees	\$12,600.00
Attorney Costs	\$295.00
Returned Checks	(\$15,723.00)
Funds in Trust	(\$6,044.10)
TOTAL	\$1,417,403.39

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
2016 APR 19 PM 3:50  
M. HOPE BLACKLEY



**REVISED EXHIBIT A**

<b>First Mortgage</b>	<b>\$0.00</b>
Second Mortgage	\$177,564.00
Third Mortgage	\$15,008.49
Carolina First Payments	\$11,052.00
Greenspace	\$39,200.00
Attorneys Fees –Anthony	\$12,600.00
Attorney Costs – Anthony	\$295.00
Returned Checks – credit due Munsey	(\$15,723.00)
Funds in Trust- credit due Munsey	(\$6,044.10)
<b>Total</b>	<b>\$233,952.39</b>

Plus Judgment Interest

Year	Interest Rate	Days Calculated	Interest	Balance
2015	7.25	30 (12/15/15-1/14/16)	\$1,394.10	\$235,346.49
2016	7.5	365(12/15/16-1/14/17)	\$17,650.99	\$252,997.48
2017	7.75	365(12/15/17-1/14/18)	\$19,607.30	\$272,604.78
2018	8.5	365(12/15/18-1/14/19)	\$23,171.41	\$295,776.19
2019	9.5	365(12/15/19-1/14/20)	\$28,098.64	<b>\$323,874.83</b>

\$323,874.83 – Judgment balance and Judgment Interest (12/14/15-1/14/2020)

\$18,000.00 Greenspace dues from 12/15/15-11/1/2018

\$24,683.22 Approved Attorney Fees

\$2,500.00 costs assessed by the Court of Appeals

+\$84,085.00 Fair Rental Value from 12/15/15-11/1/2018**\$453,143.05 - Total Judgment Balance**-\$243,000.00 Appeal Bond**\$210,143.05 - Net Final Judgment as to Otto**



Spartanburg Common Pleas

**Case Caption:** Us Bank Na , plaintiff, et al VS Alyce F Otto , defendant, et al  
**Case Number:** 2012CP4203549  
**Type:** Order/Judgment and Form 4

It is So Ordered

s/Judge Gordon G Cooper-3065