

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
LITTLE ROCK DIVISION

HARVEY BEECH

PLAINTIFF

VS.

CASE NO. 4:10-cv-00547-DPM

WELLS FARGO BANK, N.A AS TRUSTEE FOR THE  
HOLDERS OF THE FIRST FRANKLIN MORTGAGE LOAN  
TRUST 2006-FF15 MORTGAGE PASS-THROUGH  
CERTIFICATES, SERIES 2006-FF15

DEFENDANT

WELLS FARGO BANK, N.A AS TRUSTEE FOR THE  
HOLDERS OF THE FIRST FRANKLIN MORTGAGE LOAN  
TRUST 2006-FF15 MORTGAGE PASS-THROUGH  
CERTIFICATES, SERIES 2006-FF15

COUNTERPLAINTIFF

VS.

HARVEY BEECH

COUNTERDEFENDANT

WELLS FARGO BANK, N.A AS TRUSTEE FOR THE  
HOLDERS OF THE FIRST FRANKLIN MORTGAGE LOAN  
TRUST 2006-FF15 MORTGAGE PASS-THROUGH  
CERTIFICATES, SERIES 2006-FF15

THIRD PARTY PLAINTIFF

VS.

FAITH A. BEECH AND FIRST FRANKLIN,  
a Division of National Bank of Indiana

THIRD PARTY DEFENDANTS

**AGREED DECREE OF FORECLOSURE**

Pending before the Court is the counterclaim and third party complaint (the  
"Complaint") of Wells Fargo Bank, N.A. as trustee for the holders of the First Franklin  
Mortgage Loan Trust 2006-FF15 Mortgage Pass-Through Certificates, Series 2006-FF15  
("Trustee") against Harvey Beech ("Mr. Beech"), Faith Beech ("Ms. Beech"), and First

Franklin a Division of National City Bank of Indiana ("First Franklin"). Based upon the agreement among Trustee, Mr. Beech, Ms. Beech, and First Franklin, the pleadings in this case, and other evidence and proof, the Court finds and orders as follows:

1. The Court has jurisdiction over the parties to and subject matter of this action.
2. On or about August 3, 2006, Mr. Beech and Ms. Beech (the "Beeches") executed a promissory note (the "Note") in favor of First Franklin.
3. The Note is secured by a Real Estate Mortgage (the "Mortgage") that was executed by the Beeches in favor of First Franklin on or about August 3, 2006.
4. The Mortgage transferred to First Franklin a first priority mortgage interest in real property located at 121 Deer Creek Drive, Cabot, Arkansas with a legal description as follows:

A TRACT OF LAND LOCATED IN PART OF THE NW ¼ OF THE SW ¼ SECTION 11, T4N, R10W, LONOKE COUNTY, ARKANSAS. BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE NE CORNER OR THE NE CORNER OF THE NW ¼ SW ¼, SECTION 11; THENCE WEST 438.0 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 587.06 FEET; THENCE WEST 171.0 FEET; THENCE SOUTH 250.0 FEET; THENCE WEST 200 FEET; THENCE NORTH 837.06 FEET; THENCE EAST 371.0 FEET TO THE POB

(the "Property").

5. The Mortgage was recorded on August 25, 2006, in the real estate records of Lonoke County, Arkansas as document number 200611768.
6. Around the same time, the Beeches executed another \$47,000.00 promissory note (the "Second Note") in favor of First Franklin secured by a mortgage (the "Second Mortgage") on the Property. The Second Mortgage was dated August 3, 2006, and filed of

record on August 26, 2006, as instrument no. 200611769 in the real estate records of Lonoke County.

7. The Note and Mortgage were transferred to a mortgage loan securitization trust — First Franklin Mortgage Loan Trust 2006-FF15 Mortgage Pass-Through Certificates, Series 2006-FF15 — for which Trustee acts as trustee.

8. Trustee is the holder and owner of the Note and Mortgage.

9. Select Portfolio Servicing, Inc. (“SPS”) was appointed as attorney-in-fact for Trustee to service the Note and Mortgage.

10. An assignment of the Mortgage to Trustee was recorded in Lonoke County, Arkansas.

11. The Second Note and Second Mortgage were not transferred by First Franklin.

12. First Franklin merged with Bank of America, N.A. (“BANA”), with BANA being the surviving entity.

13. BANA is therefore the successor in interest to First Franklin under the Second Note and Second Mortgage.

14. The Beeches defaulted on the Note and Mortgage by failing to make full and timely payments.

15. SPS, on behalf of Trustee, sent notices of default and demands for payment to the Beeches beginning on November 28, 2008, and continuing monthly for several months.

16. The Beeches failed to cure the defaults.

17. Trustee elected to accelerate the balance due and owing under the Note, which is secured by Trustee’s properly perfected, first priority mortgage interest in the Property.

18. Pursuant to a confidential settlement agreement among Trustee and the Beeches, Trustee has waived its right to seek a joint and several judgment *in personam* against the Beeches and the Beeches have consented to foreclosure.

19. BANA was properly served with the Complaint and a summons, as described in the affidavit of service filed in this case, in order to foreclose the Second Mortgage.

20. BANA has made a search of its records, and it has determined that the debt evidenced by the Second Note has been paid in full.

21. BANA claims neither a debt owed by the Beeches to BANA, nor an interest in the Property under the recorded Second Mortgage.

22. The Second Mortgage should be released.

23. Trustee is entitled to foreclose the Mortgage, the Second Mortgage, and the Beeches' interest in the Property, and to sell the Property free and clear of all liens, claims and encumbrances, including those of Beech, Faith Beech, and BANA, by judicial sale to satisfy the judgment.

24. The purchaser at the sale is entitled to a Writ of Assistance if possession of the Property is not relinquished upon entry of judgment herein. The Court hereby retains jurisdiction to issue a Writ of Assistance so that the purchaser at the foreclosure sale can promptly gain possession of the Property.

IT IS THEREFORE ORDERED that Trustee have judgment *in rem* against the Property in the amount of \$238,310.85, representing \$183,746.01 in unpaid principal, \$40,853.16 in accrued and unpaid interest, escrow advances of \$7,362.65, fees of \$19.61, recoverable balance of \$5,536.95, and late charges of \$792.47, plus interest continuing to

accrue at the Note rate for January 11, 2012, and each day thereafter until paid in full, plus attorneys' fees and costs of \$70,913.50 and \$1,561.30, respectively.

IT IS FURTHER ORDERED that BANA shall file the appropriate documents in Lonoke County, Arkansas, to release the Second Mortgage.

IT IS FURTHER ORDERED that pursuant to 28 U.S.C. §§ 2001 and 2002, after publishing a notice of sale including the date, time, place, and terms of sale in a newspaper regularly issued and of general circulation in Lonoke County, in Arkansas, or in the Eastern Judicial District of Arkansas once each week for at least four weeks prior to the sale, the United States Marshal shall sell the Property to the highest bidder at public auction at the Lonoke County Courthouse where foreclosure sales are customarily conducted, with the proceeds of such sales to be applied first to the costs of sale, then to payment of the judgment in favor of Trustee, and then the remainder, if any, shall be held in the registry of this Court pending further Court orders.

IT IS FURTHER ORDERED that the purchaser(s) of the Property at the foreclosure sale shall pay in cash or on credit terms up to 90 days, with interest, except Trustee that is entitled to offset bid against its judgment.

IT IS FURTHER ORDERED that Trustee is entitled to enforce performance by any purchaser at a judicial sale, or without waiving damages, to take the second highest bid (and so on until the Property is sold to a bidder(s)), or if no second highest bid exists as to the Property to reschedule another sale pursuant to the terms stated herein without further Order of the Court.

IT IS FURTHER ORDERED that this Court will retain jurisdiction for the Court to enter a Writ of Assistance, if necessary, and <sup>for</sup> ~~for~~ to enter any other order to carry out the terms of this Judgment and Decree of Foreclosure.

IT IS FURTHER ORDERED that this Decree of Foreclosure fully and finally resolves all claims, defenses, and issues in this case.

WPMarshall Jr.  
Hon. D. Price Marshall

24 February 2012  
Date

APPROVED AND AGREED AS TO FORM AND CONTENT:

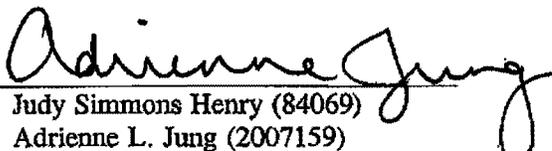
  
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Harvey Beech

  
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Faith Beech

WILSON & ASSOCIATES, P.L.L.C.  
1521 Merrill Drive, Suite D-220  
Little Rock, AR 72211  
(501) 219-9388  
EMAIL: kmorrison@wilson-assoc.com

By   
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Keith Morrison (84210)  
Attorneys for Bank of America, N.A. f/k/a  
First Franklin, a Division of National City  
Bank of Indiana

WRIGHT, LINDSEY & JENNINGS LLP  
200 West Capitol Avenue, Suite 2300  
Little Rock, Arkansas 72201-3699  
(501) 371-0808  
FAX: (501) 376-9442  
E-MAIL: jhenry@wlj.com  
ajung@wlj.com

By   
\_\_\_\_\_  
Judy Simmons Henry (84069)  
Adrienne L. Jung (2007159)  
Attorneys for Wells Fargo Bank, N.A. as  
trustee for the holders of the First Franklin  
Mortgage Loan Trust 2006-FF15 Mortgage  
Pass-Through Certificates, Series 2006-FF15