

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
EL DORADO DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

v.

Civil No. 08-1064

CHARLES EVERETT CLANTON and
MARY ANN CLANTON,
Husband and Wife,
FARMERS BANK OF HAMBURG,
and STATE OF ARKANSAS,
DEPARTMENT OF FINANCE
AND ADMINISTRATION,
Defendants.

CONSENT DECREE OF FORECLOSURE

Now on this 7th day of January, 2009, this case comes on to be heard, and the Court being advised in the premises, finds:

1. That the Court has jurisdiction of the parties and subject matter herein.
2. That the plaintiff filed its Complaint against defendants, Charles Everett Clanton, Mary Ann Clanton and Farmers Bank of Hamburg, on August 4, 2008. An Amended Complaint was filed on September 26, 2008, to include the State of Arkansas, Department of Finance and Administration as a separate defendant.
3. That the defendants were served with summons and a copy of complaint by certified mail.
4. That the answer and cross-claim of defendant, Farmers Bank of Hamburg, was filed on August 21, 2008.
5. That the answer of defendant, State of Arkansas, Department of Finance and Administration, was filed on October 23, 2008.
6. That the default of defendants, Charles Everett Clanton and Mary Ann Clanton, was entered by the Clerk on October 23, 2008, pursuant to Rule 55(a), Federal Rules of Civil Procedure.

7. That for good and valuable consideration, the defendants Charles Everett Clanton and Mary Ann Clanton, executed and delivered their Promissory Note payable to the United States of America, acting through the United States Department of Agriculture (USDA), Farm Services Agency, as follows:

Loan Type	Date of Note	Principal Amount	Interest Rate	Terms
EM-R-43-01	January 11, 2001	\$12,800.00	3.75%	20 annual installments in the amount of \$922.00 beginning July 1, 2001.

The note provided that upon default the holder might declare the entire indebtedness due and payable.

8. That the plaintiff is the legal holder of this note.

9. That to secure the payment of the Promissory Note the defendants, Charles Everette Clanton and Mary Ann Clanton, executed, acknowledged and delivered to the United States of America, acting through the USDA, a Real Estate Mortgage on the following date:

Date of Mortgage	Date Filed	Filing Information
January 11, 2001	January 12, 2001	Filed in the real estate records in the Office of the Circuit Clerk of Bradley County, Arkansas in Book 202, at Page 1.

Said mortgage covers the following real estates in Bradley County, Arkansas:

The North Half of the Southeast Quarter of the Southeast Quarter of Section 34, Township 14 South, Range 11 West, Containing 20 Acres, More or Less.

10. That the plaintiff is the legal holder of this mortgage.

11. That despite notice and demand, the defendants, Charles Everette Clanton and Mary Ann Clanton, have neglected and refused to pay their obligation on this note and are in default thereon, and the plaintiff has declared the entire indebtedness due and payable and elected to seek judgment and judicial aid of its claim, as allowed in said mortgage and by law, and that

there is due the plaintiff on account of this note the sum of \$10,103.08, plus accrued interest of \$23.88, as of May 28, 2008, for a total of \$10,126.96, with interest accruing thereafter at the daily rate of \$1.0380, until date of judgment.

12. For a valuable consideration, the defendants, Charles Everette Clanton and Mary Ann Clanton, in said mortgage waived all rights of appraisal, sale, redemption and homestead, and particularly all rights of redemption under the Act of the Arkansas Legislature approved May 8, 1899 and acts amendatory thereof, and the said defendants likewise expressly waived all rights or possibility of dower, curtesy, and homestead in and to said land and property.

13. That the relief now granted to the plaintiff is not different as to type or material amount from that sought in its Complaint.

14. That the defendant, Farmers Bank of Hamburg, claims an interest in the property which is the subject of this action by virtue of Mortgages or Deeds of Trust recorded September 10, 1999, and September 21, 1999. The interest this defendant claims is superior to the claim held by the United States of America. There is due the defendant, Farmers Bank of Hamburg, the sum of \$59,017.32 as of November 7, 2008, with interest accruing thereafter at the rate of \$13.99 per day.

15. That the defendant, State of Arkansas, Department of Finance and Administration, claims an interest in the property which is the subject of this action by virtue of Certificates of Indebtedness for taxes due filed on September 23, 2002, in Judgment Book 47 at page 10, and Judgment Book 47 at page 11, recorded in the real estate records of Bradley County, Arkansas. The interest this defendant claims is inferior to the claim held by the United States of America.

16. That the time for the defendants, Charles Everette Clanton and Mary Ann Clanton, to otherwise plead has now expired and they have failed to appear or plead to the Complaint; they are not infants, or incompetent persons, or in the active military service of the United States, and they are in default.

IT IS, THEREFORE, ORDERED AND DECREED:

That the plaintiff, United States of America, have and recover judgment in personam against the defendants in the amount of \$10,126.96, plus interest accruing at a daily rate of \$1.0380 from May 28, 2008, to date of judgment; together with interest at the legal rate of .37 percent per annum pursuant to 28 U.S.C. §1961(a) from the date of this judgment until paid; and costs herein laid out and expended.

That the prayer of the plaintiff, United States of America, for a Decree of Foreclosure should be, and is hereby, granted.

That the lien of the defendant, Farmers Bank of Hamburg, in and to the real property is prior to that of the plaintiff, United States of America, and all other parties hereto.

IT IS FURTHER ORDERED, that if the judgment of the plaintiff is not paid within ten days from this date, then Richard J. O'Connell, United States Marshal for the Western District of Arkansas shall advertise the time, place and terms of judicial sale according to law and this decree, at least once a week for four weeks prior to sale in a newspaper having a general circulation in Bradley County, Arkansas, and he shall sell at public outcry, to the highest qualified bidder, at the main door of the Bradley County Courthouse in Warren, Arkansas, on a credit of three months, the property above described. The proceeds of this judicial sale shall be applied, in the manner provided by law, first to the lien of the defendant, Farmers Bank of Hamburg, then to the judgment of the plaintiff, the United States of America, and then to the lien of the defendant, the State of Arkansas, Department of Finance and Administration.

The purchaser at the Marshal's sale shall give bond with approved security to secure payment of the purchase price, and a lien shall be retained on the property to secure payment thereof. If the plaintiff purchases the property for an amount not in excess of its judgment and costs, which are hereby granted, it may credit the amount of its bid, less all court costs, upon its judgment and need not give bond to secure the purchase price.

IT IS FURTHER ORDERED, that upon judicial sale of this property, and confirmation thereof by this Court, then all right, title and interest of all parties in and to said property, including any rights or possibility of curtesy, dower, homestead, appraisement and redemption are forever barred and FORECLOSED. Should the sale bring proceeds or credits in excess of the claims and costs of the defendant, Farmers Bank of Hamburg, the plaintiff, United States of America, and the defendant, the State of Arkansas, Department of Finance and Administration, the Court will determine the rightful owner thereof. Should the sale proceeds be insufficient to satisfy in full the judgment of the plaintiff, the United States of America, then the plaintiff, the United States of America, shall be entitled to a deficiency judgment upon proper application to this Court.

JURISDICTION of this case is retained.

/s/ Harry F. Barnes
HONORABLE HARRY F. BARNES
UNITED STATES DISTRICT JUDGE

APPROVED:
/s/ Mark W. Webb

Mark W. Webb
Assistant U.S. Attorney

APPROVED:
/s/Clairbourne C. Crews

Clairbourne C. Crews
Revenue Legal Counsel, DFA

APPROVED:
/s/ John Richard Byrd, Jr.

John Richard Byrd, Jr.
Attorney for Farmers Bank
of Hamburg