

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION**

BANK OF AMERICA, N.A.

PLAINTIFF

v.

Civil No. 11-2096

**CARUK HOLDINGS ARKANSAS, LLC;
DENISE L. CARUK; and
GORDON C. CARUK**

DEFENDANTS

MODIFIED DECREE OF FORECLOSURE

Now on this 11th day of February 2014, the Court hereby modifies its previous decree to allow for a private sale, as outlined in the Order entered on January 8, 2014. Accordingly, the Court finds as follows:

1. This Court has jurisdiction of the parties and subject matter herein.

2. On February 19, 2013, the Court entered Judgment in rem against certain Real Property in favor of plaintiff Bank of America, N.A. (BANA). The judgment was in the amount of \$87,688.52, plus attorneys' fees and costs of \$65,729.80, bearing post-judgment interest at the rate of 0.15% per annum.

3. Despite notice and demand, defendants Gordon and Denise Caruk¹ failed to pay the judgment within ten days of its entry, and on March 28, 2013, the Court entered a Decree of Foreclosure authorizing public sale of the Real Property.

4. On January 8, 2014, the Court granted BANA's motion to

¹Defendant Caruk Holdings Arkansas, LLC was dismissed from the action in an Amended and Substituted Memorandum Opinion entered on February 19, 2013.

modify the decree and approve a certain agreement for private sale of the Real Property.

5. As directed by the Court, BANA has furnished proof of publication of the terms of the proposed sale and notice that no offer of purchase was received in response to the publication.

IT IS THEREFORE ORDERED AND DECREED:

* That, as previously ordered, BANA have and recover judgment in rem against the property, and not in personam against the defendants, the amount of **\$153,418.32** (comprised of \$87,688.52 due on the loan and the sum of \$65,729.80 for attorneys' fees and costs), together with interest accruing thereon at the legal rate of 0.15% per annum pursuant to 28 U.S.C. § 1961(a) from the date of the judgment until paid, and any costs herein laid out and expended.

* That BANA's prayer for a Modified Decree of Foreclosure should be, and is hereby, **granted**.

IT IS FURTHER ORDERED:

* That the U.S. Marshal for the Western District of Arkansas, or his deputy, shall conduct a private sale of the Real Property, as described below, to Doug Ellison in accordance with this Court's Order dated January 8, 2014:

Part of the Northeast Quarter Southwest Quarter of Section 5, Township 4 North, Range 31 West, Greenwood District, Sebastian County, Arkansas, more particularly described as follows: Beginning at the Southeast corner of said Northeast Quarter Southwest Quarter; thence North 00 degrees 13 minutes 12 seconds East, along the

East line of said Forty, 16.09 feet to a point in the centerline of Arkansas Highway No. 96 and the point of beginning; thence South 84 degrees 58 minutes 37 seconds West, along said centerline 60.30 feet; thence North 89 degrees 13 minutes 12 seconds West, along said centerline, 1234.44 feet; thence North 00 degrees 12 minutes 39 seconds West, along an existing fence line, 641.05 feet; thence South 89 degrees 34 minutes 05 seconds East, 1299.19 feet to the East line of said Forty; thence South 00 degrees 13 minutes 12 seconds West, along said East line, 642.79 feet to the point of beginning. Less and except public roads and rights of way. Less and except minerals and mineral rights. Subject to all prior mineral reservations of record and subject to Oil & Gas Leases of record.

After confirmation from BANA that the purchase price has been received, the U.S. Marshal, or his deputy, shall deed the Real Property to Doug Ellison by special warranty deed. In doing so, the U.S. Marshal does not warrant title, boundary lines, taxes and/or improvements, if any, on the property. The buyer shall be responsible for filing the deed and other appropriate documents with the county.

IT IS FURTHER ORDERED:

* That, within ten (10) days after the sale, BANA will provide the Court with the U.S. Marshal's report confirming the private sale. Once the Court receives the report, an order confirming the sale and dismissing the matter will be entered. Until such time, the Court retains jurisdiction to carry out and enforce the orders herein.

IT IS FURTHER ORDERED:

* That upon sale of the Real 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.

IT IS SO ORDERED.

/s/ Jimm Larry Hendren
JIMM LARRY HENDREN
UNITED STATES DISTRICT JUDGE