

FILED  
FT. SMITH DIST.  
2022 MAY 5 PM 1 43  
*Gilmer*  
CIR. CLERK SEB. CO.

IN THE CIRCUIT COURT OF SEBASTIAN COUNTY, ARKANSAS  
FORT SMITH DISTRICT  
CIVIL DIVISION VII

FIRST NATIONAL BANK OF  
FORT SMITH

PLAINTIFF

V. CASE NO: CV-2021-318

BOLDING CONSTRUCTION COMPANY, INC.;  
MAX A. RODRIGUEZ a/k/a MAXIMUS TYRANNUS  
AVERY, Individually;  
UNITED FEDERAL CREDIT UNION; and  
SRS DISTRIBUTION, INC. d/b/a SOUTHERN SHINGLES

DEFENDANTS

UNITED FEDERAL CREDIT UNION

V.

MAX A. RODRIGUEZ a/k/a  
MAXIMUS TYRANNUS AVERY, Individually;  
SRS DISTRIBUTION, INC.  
d/b/a SOUTHERN SHINGLES;  
FIRST NATIONAL BANK OF FORT SMITH;  
And FORWARD FINANCING, LLC.

CROSS/COUNTER-  
DEFENDANTS;  
THIRD-PARTY  
DEFENDANT

ORDER CONFIRMING SALE AND APPROVING COMMISSIONER'S DEED

On this day is submitted to the Court the Report of Foreclosure Sale filed herein in the above styled and numbered cause by Cindy Gilmer, Commissioner of this Court.

WHEREUPON this Court finds:

- (a) Cindy Gilmer was previously appointed Commissioner of this Court and authorized in such capacity to sell at public venue, on a date fixed by her, the property described in the Order Granting

Summary Judgment and Foreclosure (the "Judgment") filed in this cause on March 23, 2022, including the real property, improvements, and personal property located on that real property described as follows:

**LOTS 11 AND 12 AND THE NORTH HALF OF LOT 10, BLOCK 1, FITZGERALD, AN ADDITION TO THE CITY OF FORT SMITH, SEBASTIAN COUNTY, ARKANSAS.**

**More commonly known as 302 and 304 South 14<sup>th</sup> Street, Fort Smith, AR 72901 (Collectively, the "Property")**

- (b) That upon giving notice by publication and posting for the time and in the manner described by Arkansas law, such sale was held by the above-named Commissioner on the 26<sup>th</sup> of April, 2022 between the hours prescribed by law and for judicial sale and at the time specified in the notice of sale published by said Commissioner.
- (c) United Federal Credit Union credit bid and offered to pay the credit amount of \$348,800.00 herein for the Property as well as any and all improvements and all personal property thereon as a setoff against the Judgment. Said offer by United Federal Credit Union representing the highest and best bid offered at such sale, the Property was then and there struck off and sold to it subject to approval of this Court at the price thus bid.
- (d) That the credit bid and credit amount of \$348,800.00 by United Federal Credit Union is applied as a setoff against the Judgment obtained by United Federal Credit Union as the holder of the first mortgage on the property.
- (e) That none of the foreclosure sale proceeds were paid to First National Bank nor was any credit applied as a setoff against the judgment obtained by Decree filed in this cause on November 23, 2021 in favor of First National Bank of Fort Smith.
- (f) That said sale was conducted in all respects according to law and according to the directions contained in the Judgment and orders of this Court; and said credit purchase by United Federal Credit Union should be approved by this Court. Further, any and all irregularities

in the procedure followed or in the disposition of the property sold, which includes the publications of the sale, are found to be immaterial and not misleading and are cured by the confirmation of the sale.

- (g) That the Commissioner is allowed for services rendered in conducting said sale a fee of \$348.00, said fee hereby taxed as costs of this proceeding.

IT IS THEREFORE, ORDERED that said sale to United Federal Credit Union via its credit bid was in conformity with the law and decree of this court, that the same is hereby approved and confirmed and the Commissioner is instructed to execute, acknowledge, and deliver to said purchaser a Commissioner's Deed to such purchaser. After the Commissioner's Deed is transferred to the respective purchaser, the Clerk of this Court is authorized and directed to issue proper writs of assistance upon application therefore directed to the Sheriff of Sebastian County, Arkansas, who shall proceed to place the purchaser in possession of the Property.

IT IS SO ORDERED this 5 day of May, 2022.

  
HONORABLE DIANNA HEWITT LADD  
SEBASTIAN COUNTY CIRCUIT JUDGE

This instrument prepared by:

  
Jenna R. Fogleman, AR Bar 2015150  
MILLER, BUTLER, SCHNEIDER,  
PAWLIK & ROZZELL, PLLC  
224 South 2<sup>nd</sup> St.  
Rogers, AR 72756  
Telephone: (479) 621-0006  
Telecopier: (479) 631-6890  
jfoleman@arkattorneys.com  
Attorney for United Federal Credit Union

This instrument prepared by and  
After recording to be returned to:

Jenna R. Fogleman  
Miller, Butler, Schneider,  
Pawlik & Rozzell, PLLC  
224 S 2<sup>nd</sup> Street  
Rogers, AR 72756  
(479) 621-0006

**COMMISSIONER'S DEED**

THIS INDENTURE, made this 5 day of May, 2022, by and between Cindy Gilmer as Commissioner in Circuit, party of the first part hereto, and UNITED FEDERAL CREDIT UNION, party of the first part hereto, as Plaintiff, witnesses that:

WHEREAS, the Sebastian County Circuit Court (Fort Smith Division), on March 23, 2022, among other things, ordered, adjudged, and decreed in a certain civil action then pending therein, between UNITED FEDERAL CREDIT UNION, as Plaintiff, and Max A. Rodriguez a/k/a/ Maximus Tyrannus Avery, as Defendant, Case No. CV-2021-318 that the Plaintiff have judgment in the sum of \$743,720.81, with interest thereon until paid, costs, attorney's fees, and all foreclosure and sale expenses, and that in default of the payment of said sum or any portion thereof, on or before ten days after the rendition of said decree, that all, right, title, interest, and equity redemption of the Defendants, and all right and possibility of dower, curtesy, and homestead of the Defendant(s), Max A. Rodriguez a/k/a/ Maximus Tyrannus Avery, in and to the following-described real property, to-wit:

**LOTS 11 AND 12 AND THE NORTH HALF OF LOT 10, BLOCK 1,  
FITZGERALD, AN ADDITION TO THE CITY OF FORT SMITH,  
SEBASTIAN COUNTY, ARKANSAS.**

the property more commonly known as 302 and 304 S 14<sup>th</sup> Street, Fort Smith, AR 72901, and being situated in Sebastian County, Arkansas, be foreclosed and forever barred; that after the Commissioner shall have given notice of the time, place, and terms of the sale, in the manner and for the time prescribed in said decree, the said land be sold by Cindy Gilmer, party of the first part hereto (who was by said Court in said decree nominated and appointed Commissioner of said Court for that purpose), at public venue, to the highest bidder, on a credit of three months, at the main entrance of the Courthouse of Sebastian County, Arkansas, in which said Court is held, between the hours prescribed by law for judicial sales, on a day to be fixed by said Commissioner; and

WHEREAS, the said sum of money, interest, and costs aforesaid, for the period of ten days after the rendition of said decree did remain wholly unpaid; and said party of the first part, as such Commissioner, pursuant to the order and directions in said decree, gave notice of the time, place, and terms for the sale of said real property by the publication of an advertisement and posting thereof, prescribed by the terms of said decree in the Southwest Times Record, a newspaper printed and published in said County of Sebastian and having a bona fide circulation therein, would on

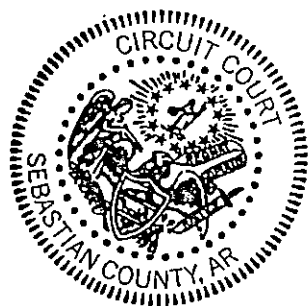
April 26, 2022, between the hours, at the place, and on the terms set forth in said advertisement and posting, offer said land and premises for sale; and on that day, between the hours prescribed by law for judicial sales, said Commissioner did offer said parcel of land and premises for sale at public venue to the highest bidder, on a credit of three months, at the main entrance of the Courthouse of said Sebastian County, Arkansas; and at such offering so made the said party of the second part did bid and offer for said parcel of land and premises the sum of \$348,800.00; and UNITED FEDERAL CREDIT UNION being the highest bidder, the same was then and there publicly struck off and sold to UNITED FEDERAL CREDIT UNION for that sum; and

WHEREAS, the undersigned, as such Commissioner, did make a written report of the sale so held by the Commissioner, to the Circuit Court, and the same was by it in all things approved and the sale confirmed, and the undersigned as such Commissioner, was ordered to make a deed to the said purchaser, as will appear by reference to the duly entered order of said Court in said action.

NOW, THEREFORE, the undersigned, as Commissioner in Circuit as aforesaid, and as party of the first part to these presents, in order to carry into effect the sale made as aforesaid in pursuance of the decree of said Circuit Court, to convey the title of the parties hereinafter named to said land and premises, pursuant to the orders of said Court, and in consideration of the premises and of the said sum of \$348,800.00 paid, hath granted, bargained, and sold, and by these presents doth grant, bargain, sell, and convey unto the said UNITED FEDERAL CREDIT UNION, party of the second part hereto, all the right, title, interest, or claim, either in law or equity, of the Defendant(s), and anyone claiming by, through, or under them, in and to said parcel of land, with all improvements thereon and all and singular the rights, privileges, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining.

TO HAVE AND HOLD the said tract or parcel of land and premises, together with all improvements thereon, and all privileges and appurtenances thereunto belonging, or in anywise appertaining unto the said party of the second part, UNITED FEDERAL CREDIT UNION, and unto its heirs, successors, and assigns forever.

IN TESTIMONY WHEREOF, I, Cindy Gilmer, the said party of the first part, hereunto subscribe my name and affix my seal as such Commissioner in Circuit on the day and year first hereinabove written.



*Cindy Gilmer*  
Cindy Gilmer  
Commissioner in Circuit Court,  
Sebastian County, Arkansas

**ACKNOWLEDGEMENT**

STATE OF ARKANSAS )  
 ) ss  
COUNTY OF SEBASTIAN )

BE IT REMEMBERED that on this 5<sup>th</sup> day of May, 2022, personally appeared before me, a Notary Public within and for the state and county aforesaid, Cindy Gilmer, a Commissioner of the Sebastian Circuit Court, to me personally well known as the person named in the foregoing instrument, and who acknowledged that the same was executed for the consideration, uses, and purposes therein mentioned and set forth.

*Stephanie Lynn Martindale*  
Notary Public

My Commission Expires: 6-26-22

I certify under penalty of false swearing that the legally correct amount of documentary stamps have been placed on this instrument. This instrument is exempt from the real property transfer tax.

Grantee's Address (send tax statements to):

United Federal Credit Union  
Attn: Loss Prevention  
P.O. Box 125  
St. Joseph, MI 49085

