

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CONSOLIDATED CAPITAL SPECIAL TRUST, et al.,)	
)	
Plaintiffs,)	No. 85 C 9105
)	
v.)	Judge Bua
)	
AMERICAN NATIONAL BANK & TRUST CO. OF CHICAGO, et al.)	
)	
Defendants.)	

**FINAL ORDER OF SUMMARY JUDGMENT AND
DECREE AND JUDGMENT OF FORECLOSURE AND SALE**

In this action for mortgage foreclosure and other relief, plaintiffs have moved for summary judgment and for a decree and judgment of foreclosure and sale. Due notice has been given to all parties entitled thereto, and this Court has considered the Complaint, the Answer thereto by defendants American National Bank & Trust Company of Chicago, not individually, but as Trustee under a Trust Agreement dated April 3, 1970 and known as Trust No. 29620, and Cleveland McCowan, Jr. ("Nondefaulted Defendants"), plaintiffs' Motion for Default and Summary Judgment ("Motion") and the accompanying Statement of Uncontested Material Facts Pursuant to Rule 12(e) ("Statement") and Second Affidavit of Donald A. Ring ("Ring Affidavit"), and the submissions of counsel on behalf of their respective clients. This Court finds as follows:

(a) It has jurisdiction over the subject matter of this action, the mortgaged premises ("Property") being located within this judicial district; and it has jurisdiction over all parties hereto, there being complete diversity

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of citizenship;

(b) Nonrecord claimants have been duly notified by publication in accordance with Ill. Rev. Stat. ch. 110, § 15-106 and are in default for failure to appear and plead herein;

(c) On December 10, 1985, this Court issued a judgment by default against defendant C. McCowan and Associates ("Associates");

(d) On December 10, 1985, plaintiffs filed their Motion, supported by the Ring Affidavit, in accordance with Fed. R. Civ. P. 56(a) and (e), and the Statement, pursuant to local Rule 12(e) of the United States District Court for the Northern District of Illinois;

(e) As of December 30, 1985, Nondefaulted Defendants have not filed a Response; and

(f) Therefore, all material allegations of plaintiffs' Complaint, Motion, and Statement are admitted by Nondefaulted Defendants.

(g) American National Bank & Trust Company of Chicago ("Borrower") is in default under the Mortgage, Assignment of Rents and Security Agreement ("Mortgage") and the Promissory Note Secured by Mortgage ("Note"), attached as Exhibits A and B, respectively, to plaintiffs' Complaint:

(i) for failing to make the required amortized monthly interest payment on August 15, 1985; and

(ii) for failing to pay the principal amount of the Note, and all accrued and unpaid interest and other charges due under the Note, after plaintiffs, in the September 16, 1985 Demand Letter ("Demand Letter") to Borrower and Cleveland McCowan, Jr. ("Guarantor"), attached

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as Exhibit E to plaintiffs' Complaint, properly accelerated payment under the Note as a result of the above-described default;

(h) Guarantor breached the Guarantee of Payment ("Guarantee"), attached as Exhibit D to plaintiffs' Complaint, by failing to pay all amounts due under the Note after plaintiffs, in the Demand Letter, properly accelerated payment under the Note as a result of the defaults described in the preceding paragraph;

(i) By virtue of the Mortgage, Note, and Guarantee there is due to plaintiffs, as of December 30, 1985, and they have a valid and subsisting lien on the Property for the following amounts:

Principal Balance and Accrued Interest on the Note as of 12/30/85	\$3,355,302.80
Attorneys' Fees as of December 30, 1985	\$ 10,148.50
Filing and Publication Fees and Other Costs of Suit	\$ 555.05
Telephone, Telegraph, and Courier	\$ 60.00
Duplication and Document Preparation	\$ 455.60
Miscellaneous	\$ 204.45
Anticipated Additional Costs	\$ 2,500.00
TOTAL:	<u><u>\$3,380,226.40</u></u>

(j) In the Mortgage, it is provided that the attorneys for plaintiffs are entitled to reasonable attorney's fees. The amount of \$10,148.50 has been included in the above indebtedness as and for attorney's fees. The amount is the usual,

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customary, and reasonable charge made by attorneys in like cases, and is hereby allowed to plaintiffs;

(k) Under the provisions of the Mortgage, the costs of this foreclosure are an additional indebtedness that plaintiffs are entitled to recover. Such costs, together with the anticipated additional costs of this foreclosure, are hereby allowed to plaintiffs;

(l) The Mortgage appears of record in the Office of Recorder of Deeds of Cook County, Illinois as Document No. 28555133. The Property encumbered by the Mortgage and directed to be sold is described as follows:

The South 25 feet of lot 6 and all of lots 7 and 8 in Stuart's Subdivision of the East one-third of that part North of 68th Street of North East quarter of the South East quarter of Section 24, Township 38 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois. 20-24-406-014 (S. 25 of 6) 015 (6078)

(m) The rights and interests of all parties to this action and to the Property are inferior to the lien of plaintiffs under the Mortgage; and

(n) The Mortgage was executed after August 7, 1961. The lien of plaintiffs under the Mortgage is governed therefore by the provisions of Ill. Rev. Stat. ch. 110, § 12-128.

Based on the foregoing findings of fact, it is hereby ORDERED, ADJUDGED, AND DECREED that:

Final Judgment on Guarantee

1. Plaintiffs are entitled to final judgment as a matter of law under Count II of the Complaint and are entitled to recover from CLEVELAND MCCOWAN, JR. the amount of \$3,369,226.40 together with interest at the rate of 7.57% per annum from the date hereof until paid.

Mortgage Foreclosure Decree

2. The Court hereby enters its final decree and judgment of foreclosure and

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sale under Count I of the Complaint in favor of plaintiffs and against all defendants.

3. Pursuant to Ill. Rev. Stat. ch. 110, §§ 15-105, 15-106, the right of nonrecord claimants to redeem the Property shall be and is hereby forever barred, and this decree and judgment of foreclosure and sale shall be conclusive against them as if each had been made a party by name and served as provided by law.

4. The Court hereby appoints B. V. WALDMAN to be the Commissioner ("Commissioner") to sell the Property and to perform the other services otherwise to be performed by a Federal Marshall, and the Commissioner shall receive reasonable compensation for his disbursements and for his services from the proceeds of sale of the property pursuant to later order of Court taking into account his customary rates for such services. Unless within ten (10) days from the entry hereof, there shall be paid to plaintiffs the sum of the principal balance and the accrued interest mentioned above in paragraph (i), together with all additional costs allowed plaintiffs, with interest thereon at the lawful rate, the Property, together with all improvements thereon and appurtenances belonging thereto, or so much thereof as may be necessary to pay the amounts found above in paragraph (i) to be due to plaintiffs and that may be sold separately without material injury to the parties in interest, shall be sold at public sale, to the highest bidder for cash, by the Commissioner at the federal courthouse in Chicago, Illinois.

5. The Commissioner shall give public notice of the time, place, and terms of sale as provided in Ill. Rev. Stat. ch. 110, § 12-115, except that notice of the sale shall be published for four (4) rather than three (3) consecutive weeks. The Commissioner, in his discretion, for good cause shown, may adjourn the sale from time to time by appearing and notifying all parties present of the date and time of such continuance without further publication. Plaintiffs or any of the parties may bid at each sale. Upon such sale being made and upon confirmation

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thereof, the Commissioner shall execute and deliver to the purchaser or purchasers a certificate or certificates of sale and shall record a duplicate thereof as required by law.

6. The Commissioner, upon making the sale, shall with all convenient speed report the sale to this Court for its approval and confirmation, and shall likewise report the distribution of the proceeds of sale and his actions in connection therewith. Out of the proceeds of the sale, the Commissioner shall make distribution in the following order of priority:

(a) To the Commissioner for his fees, disbursements, and commission on such sale; and then

(b) To plaintiffs or their attorneys, all amounts mentioned above in paragraph (i) together with interest on such amounts at the lawful rate.

7. The Commissioner shall take receipts from the respective parties to whom he may have made payments as aforesaid and file the receipts with his report of sale and distribution in this Court. If after the payments of all the foregoing amounts there shall be a remainder, the Commissioner shall hold the surplus subject to the further order of this Court. If there shall not be sufficient funds to pay in full the amounts found above in paragraph (i) to be due plaintiffs, the Commissioner shall specify the amount of deficiency in his report of sale.

8. If the Property so sold shall not have been redeemed within six (6) months from the date of such sale, then defendants and all persons claiming under them, or any of them since the commencement of this suit, shall be forever barred and foreclosed of and from all rights and equity of redemption or claim in and to the Property and any part thereof. If the Property shall not be redeemed as aforesaid, then upon production to the Commissioner or his successor of said

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certificate or certificates of sale by the legal holder thereof the Commissioner shall execute and deliver to the legal holder a good and sufficient deed of conveyance of the Property. Thereupon, the grantee or grantees in such deed, or any legal representative or assign, shall be let into possession of the Property. Any of the parties to this cause who shall be in possession of the Property or any portion thereof, or any person who may have come into such possession under them, or any of them since the commencement of this suit, shall, upon the production of the Commissioner's deed of conveyance, surrender possession of the Property to said grantee or grantees, or any representative or assign, and in default of so doing, a writ of assistance shall issue.

9. Consolidated Capital Special Trust, by and through its agent Johnstown American Companies, is entitled to remain in possession of the Property as receiver during the redemption period and collect the income, rents, profits, and proceeds of the Property and apply same to the reduction of the debt owed it and to the necessary and proper expenses incurred in the management, operation, maintenance, repair, and upkeep of said Property. Where in its discretion it deems any such actions necessary or appropriate to the purposes stated above, Consolidated Capital Special Trust (by and through Johnstown American Companies) may but need not:

(a) engage, discharge, or replace and fix the compensation of any necessary employees in or about the Property;

(b) engage such services and purchase such materials as are necessary the orderly and proper administration of the Property subject to the supervision of this Court;

(c) revise or renegotiate the terms of or terminate any existing lease of

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the Property;

(d) evict, either peaceably through self-help or through judicial proceedings, any tenant of the Property; and

(e) enter into new leases of the Property.

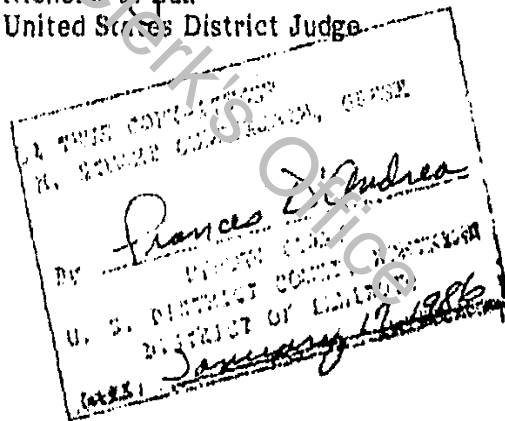
Consolidated Capital Special Trust may take any or all such actions without seeking prior approval of this Court, subject to this Court's right to disapprove any such action upon the Borrower's prompt filing of a motion challenging such action and asserting the ground for such challenge.

10. Consolidated Capital Special Trust shall account to this Court for its receipts, disbursements, and other actions taken in its capacity or receiver pursuant to this Order by written report filed with the Clerk (and a copy of such report filed in this Court's chambers) not less than once each month.

11. This Court hereby retains jurisdiction of the subject matter of this cause and of all the parties hereto for the purpose of enforcing this decree and judgment.


Nicholas J. Bua
United States District Judge

Date: January 2, 1986



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