Minute Order Form
(rev. 3/88a)

90116596

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Name of Assigned Judge or Magistrate	Suzanne B. Conlon	Sitting Judge/Mag. If Other Than Assigned Judge/Mag.	
Case Number	88 C 5284	Date	June 28, 1989
Case Title	First Wisconsin v. Dutch Gap Properties, et al.		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3d-party plaintiff, and (b) state briefly the nature of the motion being presented]

Defendants' Motion for Reconsideration

Sent for Microfilming
JUN 29 1989
Filed on JUN 30 1989

DOCKET ENTRY: (The balance of this form is reserved for notations by court staff.)

(1) [ ] Judgment is entered as follows: (2) [X] [Other docket entry:]

Defendants' motion to alter or amend judgment is denied. First Wisconsin's motion to amend the judgment entered on Count I is granted. (See reverse for details.)

Suzanne B. Conlon

(3) [ ] Filed motion of [use listing in "MOTION" box above].
(4) [ ] Brief in support of motion due ____.
(5) [ ] Answer brief to motion due ____ Reply to answer brief due ____.
(6) [ ] [ ] Hearing [ ] Ruling on ____ set for ____ at ____.
(7) [ ] Status hearing [ ] held [ ] continued to [ ] set for [ ] reset for ____ at ____.
(8) [ ] Pretrial conference [ ] held [ ] continued to [ ] set for [ ] reset for ____ at ____.
(9) [ ] Trial [ ] set for [ ] reset for ____ at ____.
(10) [ ] [ ] Bench trial [ ] Jury trial [ ] Hearing held and continued to ____ at ____.
(11) [ ] This case is dismissed [ ] with [ ] without prejudice and without costs [ ] by agreement [ ] pursuant to [ ] FRCP 4(j) (failure to serve) [ ] General Rule 21 (want of prosecution) [ ] FRCP 41(a)(1) [ ] FRCP 41(a)(2)
(12) [X] (For further detail see [X] order on the reverse of [ ] order attached to the original minute order form.)

[ ] No notices required.	ED-1 RECEIVED FOR DOCKETING 89 JUN 28 PM 3:08	2	number of notices	Document #
[ ] Notices mailed by judge's staff.		JUN 29 1989	date docketed	
[ ] Notified counsel by telephone.		MF	docketing dpty. initials	55
[X] Docketing to mail notices.		JUN 29 1989	date mld. notices	
[ ] Mail AO 450 form.				
[ ] Copy to judge/magistrate.				
courtroom deputy's initials: mkw	Date/time received in central Clerk's Office	MF	mailing dpty. initials	

90116596

(Reserved for use by the Court)

ORDER

Plaintiff First Wisconsin Trust Company and defendants State and Savings Bank, Donald F. Schroud and Selim N. Mayer ("the defendants") move this court to alter or amend its judgment order of May 1, 1989. That order granted summary judgment to First Wisconsin against Dutch Gap Properties, Inc. for amounts owed under a promissory note. The order also entered judgment against the defendants on First Wisconsin's claim for unjust enrichment.

First Wisconsin claims this court erred by not awarding interest, attorneys' fees and costs on its claim against Dutch Gap. The judgment entered against Dutch Gap in Count I awards First Wisconsin $105,651.98. This figure represents the total amount of deferred interest owed under the promissory note. However, the note expressly provides for attorneys' fees and expenses, as well as prejudgment interest at seven percent. Under Indiana law, contractual pro visions authorizing attorneys' fees, costs and interest are enforceable. Parish v. Terre Haute Savings Bank, 122 Ind. App. 636, 438 N.E.2d 1, 3 (4th Dist. 1982). Accordingly, the judgment on Count I is amended to include interest at the rate of seven percent, reasonable attorneys' fees and costs.

The defendants move for reconsideration of the judgment entered against them in Count II. They contend that First Wisconsin's claim of unjust enrichment is subject to the defenses of waiver and estoppel. The defendants failed to plead these defenses in their answer. Under Fed.R.Civ.P. 8(c) a defendant must plead all affirmative defenses in answer to the complaint. Pinto Trucking Service, Inc. v. Motor Dispatch, Inc., 649 F.2d 530, 534 (7th Cir. 1981). Generally, any defense not pleaded is waived. Id. However, failure to comply with Rule 8(c) is not fatal if the defense is raised in a manner that does not result in unfair surprise. DeVaik Lincoln Mercury, Inc. v. Ford Motor Co., 811 F.2d 326, 334 (7th Cir. 1987).

The defendants fail to persuade this court that amendment is warranted. They did not raise their affirmative defenses until over two months after the close of discovery and after briefing was scheduled on First Wisconsin's dispositive motion. Even assuming that the defendants are entitled to amend, they are unable to prevail. To establish waiver, they must show that First Wisconsin intentionally relinquished a known right. Kentucky Nat'l Gas Corp. v. Indiana Gas & Chemical Corp., 129 F.2d 17, 19 (7th Cir.), cert. denied, 317 U.S. 678 (1942). The facts demonstrate that First Wisconsin's failure to compute interest was the result of an unintentional mistake of fact. Memorandum opinion at 8, 11. To prevail under an estoppel theory, the defendants must show they were ignorant of their alleged obligation to pay interest. State v. Lugar, 171 Ind. App. 60, 354 N.E.2d 755, 765 (2d Dist. 1976). The undisputed facts show that First Wisconsin informed the defendants, on several occasions prior to the sale of the Indiana property, of their obligation to pay deferred interest. Memorandum opinion at 10, 11. The defendants' belated claim of ignorance in the face of this evidence is unpersuasive.

Accordingly, the defendants' motion to alter or amend judgment is denied. First Wisconsin's motion to amend the judgment entered on Count I is granted.

Sent for MicroFilming
JUN 29 1989

90116596

ENTERED
JUN 28 1989

AO 450 (Rev. 5/85) Judgment in a Civil Case

Filed on JUN 30 1989

United States District Court

NORTHERN DISTRICT OF ILLINOIS

Eastern Division

First Wisconsin

v.

Dutch Gap Properties, et al.

AMENDED JUDGMENT IN A CIVIL CASE

CASE NUMBER: 88 C 5284

☐ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that judgment on Count I is amended to include interest at the rate of seven percent, reasonable attorneys' fees and costs.

90116596

June 28, 1989
Date

H. STUART CUNNINGHAM
Clerk

(By) Deputy Clerk
Claudia M. Flagg

56

U.S. GOVERNMENT PRINTING OFFICE 1986—606-002

Minute Order Form (rev. 3/88)

90116596

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Name of Assigned Judge or Magistrate	Suzanne B. Conlon	Sitting Judge/Mag. If Other Than Assigned Judge/Mag.	
Case Number	88 C 5284	Date	May 1, 1989
Case Title	First Wisconsin v. Dutch Gap, et al.		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3d-party plaintiff, and (b) state briefly the nature of the motion being presented]

Plaintiff's Motion for Summary Judgment

Defendants' Motion for Summary Judgment

Sent for Microfilming MAY 04 1989

Filmed on MAY 05 1989

DOCKET ENTRY: (The balance of this form is reserved for notations by court staff.)

(1) [X] Judgment is entered as follows: (2) [ ] [Other docket entry:]

First Wisconsin's motion for summary judgment on Counts I and II is granted. Defendants' motion for summary judgment is denied. Judgment is entered for First Wisconsin Trust Company and against Dutch Gap Properties, Inc. in the amount of $105,651.98 on Count I. Judgment is entered for First Wisconsin Trust Company and against State and Savings Bank, Donald F. Schroud and Selim N. Mayer on Count II in the amount of $105,709.46. ENTER MEMORANDUM OPINION AND ORDER.

Suzanne B. Conlon

(3) [ ] Filed motion of [use listing in "MOTION" box above].

(4) [ ] Brief in support of motion due _____.

(5) [ ] Answer brief to motion due _____ Reply to answer brief due _____.

(6) [ ] [ ] Hearing [ ] Ruling on _____ set for _____ at _____.

(7) [ ] Status hearing [ ] held [ ] continued to [ ] set for [ ] reset for _____ at _____.

(8) [ ] Pretrial conference [ ] held [ ] continued to [ ] set for [ ] reset for _____ at _____.

(9) [ ] Trial [ ] set for [ ] reset for _____ at _____.

(10) [ ] [ ] Bench trial [ ] Jury trial [ ] Hearing held and continued to _____ at _____.

(11) [ ] This case is dismissed [ ] with [ ] without prejudice and without costs [ ] by agreement [ ] pursuant to [ ] FRCP 4(j) (failure to serve) [ ] General Rule 21 (want of prosecution) [ ] FRCP 41(a)(1) [ ] FRCP 41(a)(2)

(12) [X] (For further detail see [ ] order on the reverse of [X] order attached to the original minute order form.)

[ ]	No notices required.	RECEIVED FOR DOCKETING ED-1 89 MAY -3 PM 3:40		number of notices
[X]	Notices mailed by judge's staff.		MAY 04 1989	date docketed
[ ]	Notified counsel by telephone.		MF	docketing dpty. initials
[ ]	Docketing to mail notices.		5-2-89	date mld. notices
[ ]	Mail AO 450 form.			
[ ]	Copy to judge/magistrate.			
courtroom deputy's initials	mkw	Date/time received in central Clerk's Office		mailing dpty. initials

Document # 45

90116596

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

FIRST WISCONSIN TRUST COMPANY, as Trustee under Indenture of Mortgage and Deed of Trust dated October 10, 1967 Plaintiff, v. DUTCH GAP PROPERTIES, INC., STATE AND SAVINGS BANK as Trustee under Trust Agreement dated August 15, 1986 and known as Trust No. 199, DONALD F. SCHROUD and SELIM N. MAYER, Defendants.	No. 88 C 5284 Judge Suzanne B. Conlon

MEMORANDUM OPINION AND ORDER

Plaintiff First Wisconsin Trust Company ("First Wisconsin") commenced this action against defendants Dutch Gap Properties, Inc. ("Dutch Gap"), State and Savings Bank, Donald F. Schroud ("Schroud") and Selim N. Mayer ("Mayer") to recover deferred interest allegedly due on a promissory note. Diversity jurisdiction is based on 28 U.S.C. § 1332. All parties move for summary judgment under Fed.R.Civ.P. 56.

FACTS

The roots of this action extend back to 1964 when Dutch Gap borrowed $1,191,000 from Teachers Insurance and Annuity Association of America ("Teachers"). Complaint ¶ 10. Dutch Gap

46

secured this loan with a mortgage note collateralizing real property located in White County, Indiana ("the property"). Id. First Wisconsin purchased the loan from Teachers and became the trustee after Dutch Gap exchanged the original note for a series A note and simultaneously executed an indenture of mortgage and deed of trust ("the mortgage"). First Wisconsin Facts ¶ 7. The note and the mortgage are secured by the property. Id.

The mortgage and note expressly state that in addition to current interest, the note shall bear additional or deferred interest payable at maturity. First Wisconsin Facts ¶¶ 8, 9. Schroud and Mayer were advised of the financial structure of the note when they purchased the property on May 19, 1986. Id. at ¶ 12. The purchase agreement expressly stated that Schroud and Mayer were informed that, as of February 20, 1986, the unpaid principal on the note was $289,418.42 and the accrued deferred interest payable at maturity was $95,021.00. Id.

When Schroud and Mayer purchased the property, they became the sole shareholders of Dutch Gap. Id. at ¶ 18. In addition, they simultaneously conveyed the property to a trust maintained in Indiana by State and Savings Bank ("the trust"). Id. at ¶ 10. They also contacted First Wisconsin and requsted an accounting of their liability on the note. Id. at ¶ 19. By letter dated September 2, 1986, First Wisconsin informed Schroud and Mayer that the outstanding principal on the note was

$254,094.11 and that the deferred interest was $95,021.50. Id. However, First Wisconsin also informed them that the deferred interest would increase to $96,519.68 by October 15, 1986, pursuant to the note's amortization schedule. Id. at ¶¶ 19, 21.

Schroud and Mayer owned the property until 1988, when they instructed the trust to execute a sales contract. Id. at ¶ 22. Before proceeding with negotiations, Schroud and Mayer again requested First Wisconsin to prepare an accounting of their liability on the note. Id. at ¶ 28. But this time they requested a payoff letter indicating the total debt due if the note were paid off on April 15, 1988. Id. First Wisconsin responded to this request by preparing a payoff letter based on information contained in its computer system. Id. at ¶ 31. First Wisconsin's computer system did not show that deferred interest was owed on the note. Id. Accordingly, when a First Wisconsin employee calculated the note's principal and interest based on the figures generated by the bank's computer system, the final payoff amount omitted the deferred interest component. Id. at ¶ 36.

The payoff figures submitted to Schroud and Mayer included $142,283.00 in principal and $1,911.93 in interest. Id. at ¶ 34. Schroud and Mayer relied on these figures when they negotiated the sale of the property. Defendants Facts ¶ 5. However, they did not verify the accuracy of the payoff amount, or whether First Wisconsin mistakenly omitted the deferred interest component. First Wisconsin Facts ¶ 37.

On April 6, 1988, Schroud and Mayer sold the property for $1,189,716.51. Id. at ¶ 39. The closing occurred in Indiana. Id. at ¶ 38. Shortly afterwards, First Wisconsin discovered that it neglected to include the amount of deferred interest in its payoff letter. Id. at ¶ 42. On April 14, 1988, First Wisconsin sent a revised payoff letter to the attorneys for Schroud and Mayer informing them that the note's deferred interest component was $105,709.96. Id. at ¶ 43. However, on April 15, 1988, Schroud and Mayer instructed their Indiana escrow agent to pay off the note in accordance with First Wisconsin's original payoff letter. Id. at ¶ 45. First Wisconsin subsequently informed Dutch Gap, Schroud and Mayer that they were in default on their obligations under the note. Id. at ¶ 48.

DISCUSSION

A motion for summary judgment under Fed.R.Civ.P. 56 should be granted only if there are no material facts in dispute and the movant is entitled to judgment as a matter of law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247 (1986); Silverman v. Ballantine, 694 F.2d 1091, 1093 (7th Cir. 1982). A party responding to a motion for summary judgment must set forth specific facts supporting the existence of a genuine issue for trial. Powers v. Dole, 782 F.2d 689, 694 (7th Cir. 1986); Posey v. Skyline Corp., 702 F.2d 102, 105 (7th Cir. 1983). All reasonable factual inferences must be viewed in favor of the non-movant.

Hermes v. Hein, 742 F.2d 350, 353 (7th Cir. 1984); Korf v. Ball State Univ., 726 F.2d 1222, 1226 (7th Cir. 1984).

A. Choice of Law

A federal court sitting in diversity applies the choice of law rules of the forum state. Klaxon v. Stentor Electric Mfg. Co., 313 U.S. 487, 496-97 (1941); American Home Assurance Co. v. Dykema, Gosset, Spencer, Goodnow & Trigg. 811 F.2d 1077, 1087 (7th Cir. 1987). In Illinois, choice of law provisions in contracts are recognized as valid and enforceable. Hofeld v. Nationwide Life Ins. Co., 59 Ill.2d 511, 322 N.E.2d 454, 458 (1975). The mortgage expressly provides that Indiana law governs the application and construction of the note. Complaint Ex. A ¶ 11.11. Applying Illinois' choice of law rules, this court shall honor the parties' contractual choice of law and apply Indiana law to the breach of contract claim in Count I. Hofeld, 59 Ill.2d 511, 322 N.E.2d at 458.

Count II asserts a claim of unjust enrichment. Unjust enrichment is based on the equitable theory of restitution. Borowski v. DePuy, Inc., 850 F.2d 297, 301 (7th Cir. 1988); First Nat'l Bank of Waukesha v. Warren, 796 F.2d 999, 1000 (7th Cir. 1986); Overseas Development Disc Corp. v. Sangamo Construction Co., Inc., 686 F.2d 498, 510-11 (7th Cir. 1982). Under Illinois' choice of law rules, this court shall apply the most significant relationship test, set forth in Section 221 of

the Restatement (Second) of Restitution, to determine the law applicable to Count II. Overseas Development Disc Corp., 686 F.2d at 510-11. This section requires examination of five factors: (1) the place where the relationship between the parties was centered; (2) the place where the benefit or enrichment was received; (3) the place where the act conferring the benefit or enrichment occurred; (4) the domicile, residence, nationality, place of incorporation or place of business of the parties; and (5) the place where property substantially related to the enrichment was situated at the time of the enrichment. Restatement (Second) of Restitution § 221, Overseas Development Disc Corp., 686 F.2d at 510-11.

The focal point of the parties' relationship was a parcel of Indiana property pledged as security for the mortgage and note. Without the Indiana property, First Wisconsin would not have agreed to act as trustee.

The place where the enrichment was received is more problematic. Technically, Schroud and Mayer retained the benefits of the sale, including the funds allegedly owed to First Wisconsin, in their Chicago bank account. However, when the sale closed, Schroud and Mayer's Indiana escrow agent retained the sale proceeds at an Indiana bank. On April 15, Schroud and Mayer contacted the escrow agent and requested that the agent pay First Wisconsin the amounts due on the note. Because the escrow

agent failed to pay the deferred interest, arguably Schroud and Mayer were enriched in Indiana.

The remaining contacts also point to Indiana. Although First Wisconsin computed the incorrect payoff figures at its offices in Wisconsin, the Indiana escrow agent retained the amount of deferred interest allegedly owed. Under these circumstances, the act conferring the enirchment also occurred in Indiana. Only one of the three defendants named in Count II (State and Savings Bank) resides in Indiana; Schroud and Mayer reside in Illinois. However, the parcel of land that is substantially related to the enrichment is located in Indiana. This final factor tips the balance of contacts to Indiana. Accordingly, this court shall apply Indiana law to Count II.

B. Motion for Summary Judgment on Count I

Count I alleges that Dutch Gap defaulted on the note by not paying the deferred interest component. Dutch Gap claims that First Wisconsin is precluded from recovering this amount because its failure to request deferred interest in the original payoff letter was a mistake of law. First Wisconsin claims that the omission of the deferred interest figure was only a mistake of fact.

In Indiana, payment of less than the total amount due under an agreement does not release the debtor from liability for the balance of the debt. Markel's Administrator v.

Spitler's Administrator, 28 Ind. 488, 491 (1867); Gearhart v. Barker, 71 Ind. Dec. 247, 393 N.E.2d 258, 260-61 (3d Dist. 1979). Where the creditor mistakenly advises a debtor that a lesser sum is due, the debtor is liable for the difference if the creditor made a mistake of fact. Id.; Monroe Financial Corp. v. Disilvestro, ___ Ind. App. ____, 529 N.E.2d 379, 383 (1st Dist. 1988). However, if the creditor computed the amount due based on an erroneous interpretation of contract terms, the error is a mistake of law for which no relief can be granted. P.S. & E. West, Inc. v. Essex Group, Inc., No. 85 C 4710 slip op. at 13 (N.D. Ill. July 20, 1987); Becker v. MacDonald, ___ Ind. App.___, 488 N.E.2d 729, 731 (4th Dist. 1986).

The undisputed facts in this case establish that a First Wisconsin employee obtained payoff figures for principal and interest due on the note by using First Wisconsin's computer system. First Wisconsin Facts ¶ 31. First Wisconsin employees preparing the payoff letter based their calculations of principal and interest on the computer-generated figures. Id. at ¶¶ 32-35. They did not rely on the note itself or the mortgage to determine whether deferred interest was owed. These facts lead inescapably to the conclusion that First Wisconsin's error was a mistake of fact and not a mistake of law. Markel's Administrator, 28 Ind. at 491; Monroe Financial Corp., 529 N.E.2d at 383; Gearhart, 393 N.E.2d at 260-61.

Dutch Gap argues that the payoff letter was issued with full knowledge of the deferred interest component. Dutch Gap asks this court to conclude that First Wisconsin erroneously interpreted the terms of the note and made a mistake of law. This argument is without merit. No facts are alleged to show that First Wisconsin employees knew about the note's deferred interest provision. Indeed, deposition testimony of First Wisconsin employees establishes just the opposite. First Wisconsin Facts ¶ 35, Sira Dep.; First Wisconsin Supplemental Facts ¶ 58, Mayer Dep.

Dutch Gap also argues that payment of the note on April 14, 1988, was an accord and satisfaction that effectively liquidated the debt. The record does not support this argument. An accord and satisfaction arises when the parties dispute the amount owed and the creditor agrees to accept a modified amount in full settlement of the dispute. Gearhart, 393 N.E.2d at 261. Here, the parties did not dispute the note's deferred interest provision prior to April 15, 1988. Before issuing the payoff letter, First Wisconsin informed Schroud and Mayer on several occasions that the note required payment of deferred interest at maturity. First Wisconsin Facts ¶ 19. Schroud and Mayer also received an amortization schedule relating to deferred interest on the note when they purchased the property in 1986. Id. at ¶ 21. Schroud and Mayer never disputed Dutch Gap's obligation to pay deferred interest.

Since it is undisputed that Dutch Gap was obligated to pay deferred interest and that deferred interest was inadvertently omitted from the payoff letter because of a computer error, First Wisconsin is entitled to judgment on its claim in Count I as a matter of law. Markel's Administrator, 28 Ind. at 491; Monroe Financial Corp., 529 N.E.2d at 383; Gearhart, 393 N.E.2d at 260-61.

C. Motion for Summary Judgment on Count II

Count II seeks judgment against Schroud, Mayer and State and Savings Bank in the amount of $105,709.46, and a declaration that each of these defendants held this sum as constructive trustees for First Wisconsin's benefit.

First Wisconsin seeks judgment based on a theory of unjust enrichment. To recover, First Wisconsin must show the existence of an implied agreement, that it expected to receive deferred interest upon maturity of the note and that equity and good conscience demand restitution for overdue interest to prevent unjust enrichment. Stafford v. Barnard Lumber Co., Inc., ___ Ind. ___, 531 N.E.2d 202, 204 (1988); Indianapolis Raceway Park v. Curtiss, 179 Ind. App. 557, 386 N.E.2d 724, 726 (1st Dist. 1979); Glick v. Seufert Construction & Supply Co., Inc., 168 Ind. App. 354, 342 N.E.2d 874, 877 (1st Dist. 1976).

Schroud and Mayer knew they were obligated to pay deferred intrest. They received a copy of the deferred interest

amortization schedule when they purchased the property. On two occasions, Schroud and Mayer specifically requested that first Wisconsin provide them with a deferred interest accounting. They also received the benefit of the deferred interest payments during the term of the note. These circumstances create an implied agreement between First Wisconsin and Schroud and Mayer that the deferred interest would be paid at maturity. Because First Wisconsin's failure to request payment of deferred interest in the payoff letter was a mistake of fact, equity and good conscience compel Schroud and Mayer and State and Savings Bank to make restitution to First Wisconsin in the amount of $105,709.46. However, First Wisconsin is not entitled to an award of interest or attorneys' fees. Stanley Gudyka Sales v. Lacy Forest Products Co., 686 F. Supp. 1301, 1307 (N.D. Ill. 1988); Lesher v. Baltimore Football Club, ___ Ill. App. ___, 496 N.E.2d 785, 792 (4th Dist. 1986); Erie-Haven v. Tippmann Refrigeration Construction, ___ Ind. App. ___, 486 N.E.2d 646, 651 (3d Dist. 1985).

Schroud and Mayer and State and Savings Bank are not constructive trustees of the funds at issue. Indiana courts permit the imposition of a constructive trust only under circumstances of fraud and undue influence. Accordingly, a constructive trust is not appropriate.

CONCLUSIONS

First Wisconsin's motion for summary judgment on Counts I and II is granted. The court declines to impose a constructive trust on the funds at issue in Count II. Defendants' motion for summary judgment is denied.

Judgment is entered for First Wisconsin Trust Company and against Dutch Gap Properties, Inc. in the amount of $105,651.98 on Count I. Judgment is entered for First Wisconsin Trust Company and against State and Savings Bank, Donald F. Schroud and Selim N. Mayer on Count II in the amount of $105,709.46.

ENTER:

Suzanne B. Conlon
United States District Judge

May 1, 1989

FILED 90116596

MAY 14 1989

AO 450 (Rev. 5/85) Judgment in a Civil Case

United States District Court

NORTHERN DISTRICT OF ILLINOIS

Eastern Division

First Wisconsin Trust Co.

v.

Dutch Gap & State and Savings Bank, et al.

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 88 C 5284

☐ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that summary judgment is entered in favor of plaintiff, FIRST WISCONSIN TRUST CO., and against defendant, DUTCH GAP PROPERTIES, in the amount of $105,651.98 on Count I. Judgment is entered in favor of plaintiff, FIRST WISCONSIN TRUST CO., and against defendants, STATE AND SAVINGS BANK, DONALD F. SCHROUD AND SELIM N. MAYER in the amount of $105,709.46 on Count II.

90116596

May 2, 1989

Date

H. STUART CUNNINGHAM

Clerk

Claudia M. Flagg

(By) Deputy Clerk

Claudia M. Flagg

47

U.S. GOVERNMENT PRINTING OFFICE: 1985--506 002

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Pin. 05-35-404-009

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90018598

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Chicago IL 606

Att

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