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MW 198120/7749E

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

UNITED STATES DISTRICT COURT

CAPITOL BANKERS LIFE INSURANCE)
COMPANY, a Minnesota corporation,)

Plaintiff,)

v.)

No. 90 C 5809

LASALLE NATIONAL BANK, not)
personally, but solely as)
Trustee under Trust Agreement)
dated December 9, 1970 and)
known as Trust No. 41695,)
LINCOLN-PRATT BUILDING CORPORA-)
TION, an Illinois corporation,)
DATABANK, INC., an Illinois)
corporation, CHICAGO AREA)
BUILDING SPECIALTIES, DIVISION)
OF L&W SUPPLY CORPORATION, an)
Illinois corporation, DAN)
NISSEN, LESTER STEIN, DANIEL)
BAKOVIC, d/b/a Rehab Construction)
Service and DUNCAN CARPET COMPANY,)

Judge James B. Zagel

Defendants.)

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JUDGMENT OF FORECLOSURE AND SALE

This cause coming to be heard on the motion for judgment of foreclosure and sale filed by plaintiff, Capitol Bankers Life Insurance Company, pursuant to Ill.Rev.Stat., Ch. 110, §§ 2-1301(d) and 15-1506(a) and (h), and the Court finding that due and proper notice has been given; that plaintiff has commenced this action by filing its Complaint for Foreclosure and Other Relief against defendants, LaSalle National Bank, not personally, but solely as

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Trustee under Trust Agreement dated December 9, 1970 and known as Trust No. 41695, Lincoln-Pratt Building Corporation, an Illinois corporation, Databank, Inc., an Illinois corporation, Chicago Area Building Specialties, Division of L&W Supply Corporation, an Illinois corporation, Dan Nissen and Lester Stein, and further finding that:

I. JURISDICTION

A. It has jurisdiction of the parties to and subject matter of this action.

B. The following defendants have each been properly served with a summons and a copy of the complaint or have otherwise filed an appearance on the dates shown:

	<u>Service or Appearance</u>
LaSalle National Bank, not personally, but solely as Trustee under Trust Agreement dated December 9, 1970 and known as Trust No. 41695	October 10, 1990, Appearance
Lincoln-Pratt Building Corporation, an Illinois corporation	November 20, 1990, Appearance
Databank, Inc., an Illinois corporation	December 7, 1990, Appearance
Chicago Area Building Specialties, Division of L&W Supply Corporation, an Illinois corporation	November 8, 1990, Service
Dan Nissen	November 24, 1990, Service
Lester Stein	November 20, 1990, Appearance

II. EVIDENTIARY FINDINGS

C. All material allegations of the Complaint are true and proven and are supported by the Complaint.

D. The evidence of the indebtedness ("Note") and the security foreclosed ("Mortgage") has been exhibited in open Court and has been attached to plaintiff's complaint as Exhibits 1 and 2. Exhibits 1 and 2 are admitted into evidence. Leave is given to withdraw the originals of the documents and substitute copies.

III. FEES AND COSTS

E. Plaintiff has been compelled to employ and retain attorneys to prepare and file the complaint and to represent and advise the plaintiff in the foreclosure of the mortgage, and the plaintiff has and will thereby become liable for the usual, reasonable and customary fees of the attorneys.

F. The plaintiff has been compelled to advance and will be compelled to advance, after entry of this judgment, various sums of money in payment of costs, fees, expenses and disbursements incurred in connection with the foreclosure, including, without limiting the generality of the foregoing, filing fees, stenographer's fees, witness fees, costs of publication, costs of procuring and preparing documentary evidence and costs of procuring foreclosure minutes and a title insurance policy.

G. Under the terms of the Mortgage, all such advances, costs,

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attorneys' fees and other fees, expenses and disbursements are made a lien upon the mortgaged real estate and the plaintiff is entitled to recover all such advances, costs, attorneys' fees, expenses and disbursements, together with interest on all advances at the rate provided in the mortgage, or, if no rate is provided therein, at the statutory judgment rate, from the date on which such advances are made.

H. In order to protect the lien of the Mortgage, it may or has become necessary for plaintiff to pay taxes and assessments which have been or may be levied upon the mortgaged real estate and to pay fire and other hazard insurance premiums on the real estate or to make such repairs to the real estate as may reasonably be deemed necessary for the proper preservation thereof or to incur other costs and expenses as provided in the Mortgage.

I. Under the terms of the Mortgage, any money so paid or expended has or will become an additional indebtedness secured by the Mortgage and will bear interest from the date such monies are advanced at the rate provided in the Mortgage, or, if no rate is provided, at the statutory judgment rate.

IV. ULTIMATE FINDINGS

J. The equities in this cause are with the plaintiff, who is entitled to a Judgment of Foreclosure and Sale in accordance with the prayer of the Complaint together with interest thereon at the statutory rate after the entry of this judgment and additional court

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costs and expenses of sale and additional costs and expenses that plaintiff may incur as set forth in the Mortgage which shall be included in an amended or additional judgment at the time this court enters an order confirming the sale provided for herein.

K. There is due plaintiff upon the Note secured by the Mortgage and plaintiff has a valid and first lien upon the real estate hereinafter described in the following amounts:

1. For fees and costs:		
a. Normal, reasonable, usual and customary attorneys' fees due Katz, Randall & Weinberg:		\$5,235.75
b. Costs:		
Title Insurance Company:	\$310.00	
Clerk of the Court:	\$120.00	
Recording:	\$14.00	
Telephone:	\$51.00	
Delivery:	\$ 22.75	
Total costs:		<u>\$517.75</u>
Total fees and costs:		\$5,753.50
2. For unpaid principal, interest and advances:		
a. Principal balance as of December 1, 1990:	\$310,340.29	
b. Interest through February 22, 1991:	<u>\$ 26,689.24</u>	
Total unpaid principal and interest due and owing plaintiff as of February 22, 1991:		<u>\$337,029.53</u>
TOTAL AMOUNT DUE:		\$342,783.03

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L. The court has reviewed the foregoing costs and fees and the sum of attorneys' fees and costs allowed herein as stated in paragraph K above were necessarily incurred and are fair, reasonable, customary and proper charges to be allowed to plaintiff as attorneys' fees and costs in this proceeding in accordance with the terms of the Note and Mortgage given to plaintiff by said defendants, which has been added to and becomes a part of the indebtedness due to plaintiff.

M. Plaintiff is the holder of a valid mortgage and plaintiff's Mortgage is a valid lien upon the real estate which is prior, paramount and superior to all other mortgages, claims of interests and liens upon the real estate of all other parties except for real estate taxes and special assessments, if any.

N. Plaintiff has joined Daniel Bakovic, d/b/a Rehab Construction Services, and Duncan Carpet Company, Inc. as additional defendants and has elected, pursuant to Ch. 110, § 1506(h) of the Illinois Mortgage Foreclosure Law, to defer proving the priority of plaintiff's mortgage over the liens of those additional defendants until the hearing to confirm the sale.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that a judgment for foreclosure and sale is granted to plaintiff and against all defendants and it is further ordered as follows:

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I. ORDER FOR FORECLOSURE

1. The defendants are ordered to pay to the plaintiff, before expiration of five days from and after the date of this judgment, the total amount due of \$342,782.03 plus interest at the default rate set forth in the Note from February 22, 1991 and interest at the statutory judgment rate from the date of judgment.

2. In default of such payment in accordance with this judgment, the mortgaged real estate, with all improvements, fixtures and appurtenances thereto, or so much of said real estate which may be divisible and sold separately without material injury to the parties in interest, shall be sold at public auction to the highest bidder for cash as hereinafter provided, to satisfy the total amount due to the plaintiff as set forth in this judgment, together with interest thereon at the statutory judgment rate from the date of the judgment and such additional costs and expenses that plaintiff may incur under the Mortgage after the date of this judgment.

3. In the event the plaintiff is a purchaser of the mortgaged real estate at such sale, the plaintiff may offset against the purchase price of such real estate the amounts due under the judgment for foreclosure and order confirming the sale.

4. The property herein referred to and hereby foreclosed and directed to be sold is situated at the address commonly known as 6820-6830 North Lincoln Avenue, Lincolnwood, Illinois, and is more particularly described as follows:

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Lots 69, 70, 71, 72, 74 and 75 in Lincoln Crawford Pratt Boulevard Subdivision, a subdivision of the south 1/2 of the East 15 acres and the south 1/2 of the west 25 acres (except the south 30 feet of that part lying west of Lincoln Avenue) of the south east 1/4 of the north east 1/4; also that part of the east 1/2 of the south east 1/4 lying north east of the northeasterly line of Lincoln Avenue in Section 34, Township 41 North, Range 13 east of the Third Principal Meridian, in Cook County, Illinois;

P.I.N. 10-34-231-007 (Lot 75); 10-34-231-008 (Lot 74); 10-34-231-022 (Lot 69); 10-34-231-023 (Lot 70); 10-34-231-024 (Lot 71); 10-34-231-025 (Lot 72);

5. In the event of such sale, the defendants made parties to the foreclosure in accordance with statutory provisions, and all persons claiming by, through or under them, and each and any and all of them, shall be forever barred and foreclosed of any right, title, interest, claim, lien or right to redeem in and to the mortgaged real estate.

6. A deed shall be issued to the purchaser at such sale according to law and such purchaser shall be let into possession of the mortgaged real estate in accordance with statutory provisions.

II. REDEMPTION

7. This is a foreclosure of a mortgage of commercial real estate and not a foreclosure of a mortgage of residential real estate.

8. Under the Mortgage, defendant, LaSalle National Bank as

Trustee under Trust 41695, waived any and all rights of redemption from the foreclosure sale of the subject premises which waiver is fully effective and binding as to all of the parties hereto.

III. ORDER FOR JUDICIAL SALE

9. The real estate shall be sold for cash by the Special Commissioner appointed by this court in Dirksen Federal Building, Chicago, Illinois, in accordance with statutory provisions at a time and place to be selected by said Special Commissioner.

10. The notice of sale shall be published at least four consecutive calendar weeks (Sunday through Saturday), once in each week, the first such notice to be published not more than 45 days prior to the sale, the last such notice to be published not less than seven days prior to the sale, by an advertisement in a newspaper circulated to the general public in the county in which the real estate is located, in the section of that newspaper where legal notices are commonly placed and a separate advertisement in the section of such newspaper, which (except in Cook County, Illinois) may be the same newspaper, in which real estate other than real estate being sold as part of legal proceedings is commonly advertised to the general public; provided, that where both advertisements could be published in the same newspaper and that newspaper does not have separate legal notices and real estate advertisement sections, a single advertisement shall be sufficient.

11. The party who gives notice of public sale shall also give

notice to all parties in the action who have appeared and have not heretofore been found by the court to be in default for failure to plead. Such notice shall be given in the manner provided in the applicable rules of court for service of papers other than process and complaint, not more than 28 days nor less than 7 days prior to the day of sale. After notice is given as required in this Section, a copy thereof shall be filed in the office of the clerk of this court together with a certificate of counsel or other proof that notice has been served in compliance with this Section.

12. The sale may be adjourned at the discretion of the party conducting it. The party who gives notice of public sale shall again give notice of any adjourned sale; provided, however, that if the adjourned sale is to occur less than 30 days after the last scheduled sale, notice of any adjourned sale need be given only once, not less than 5 days prior to the day of the adjourned sale.

13. Upon the sale of the mortgaged real estate, the person conducting the sale shall give a certificate of sale to the purchaser and cause such certificate of sale to be recorded. The certificate shall be freely assignable by endorsement thereon.

IV. TRANSFER OF TITLE

14. Upon or after confirmation of the sale, the person who conducted the sale or the court shall execute a deed to the purchaser sufficient to convey title, which deed shall identify the court and the caption of the case in which judgment was entered

authorizing issuance of the deed. Signature and the recital in the deed of the title or authority of the person signing the deed as grantor, of authority pursuant to this judgment and of the giving of the notices required by statute shall be sufficient proof of the facts recited and of such authority to execute the deed, but such deed shall not be construed to contain any covenant on the part of the person executing it.

15. Delivery of the deed executed on the sale of the real estate, even if the purchaser is a party to the foreclosure, shall be sufficient to pass the title thereto. Such conveyance shall be an entire bar of all claims of parties to the foreclosure.

V. APPLICATION AND DISTRIBUTION OF PROCEEDS

17. The proceeds resulting from the sale ordered herein shall be applied in the following order:

- (a) the reasonable expenses of sale;
- (b) the reasonable expenses of securing possession before sale, holding, maintaining, and preparing the real estate for sale, including payment of taxes and other governmental charges, premiums on hazard and liability insurance, management fees, and, to the extent provided for in the mortgage or other recorded agreement and not prohibited by law, reasonable attorneys' fees, payments made pursuant to Illinois Revised Statutes, Chapter 110, Section 15-1505 and other legal expenses incurred by the mortgagee;
- (c) satisfaction of the claim of the plaintiff, Capitol Bankers Life Insurance Company, adjudicated in this judgment of foreclosure; and
- (d) any surplus shall be held subject to further

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order of the court pending adjudication of the
lien of Duncan Carpet Company and Daniel Bakovic,
d/b/a Rehab Construction Service.

18. The person conducting the sale shall file a report of sale with the clerk of this court specifying the amount of proceeds of sale realized and the disposition thereof.

19. If the money arising from said sale shall be insufficient to pay the amounts due to plaintiff with interest and the costs and expenses of sale, the person conducting the sale shall specify the amount of such deficiency in the report of sale, and a judgment shall be entered therefor, if appropriate.

VI. POSSESSION

20. Plaintiff is authorized to take possession of said real estate upon and after default by the terms of the mortgage foreclosed; plaintiff has prevailed on a final hearing of this cause; plaintiff has requested to be placed in possession of said real estate, and defendant-mortgagor has not objected and shown good cause for having possession of said premises hereafter. After the entry of this judgment, plaintiff shall have exclusive possession of said real estate and after the sale ordered herein, the purchaser shall have plaintiff's right to be placed in possession of said real estate.

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VII. FINAL ORDER

21. The court hereby retains jurisdiction of the subject matter of this cause and of all the parties hereto for the purpose of enforcing this Judgment, and expressly finds that there is no just reason for delaying the enforcement of this Decree or an appeal therefrom.

Date: 22 Feb 1991

Entered:

James B. Zogh
Judge

. DEPT-01 RECORDING \$24.00
. T#1111 TRAN 8788 02/27/91 11:20:00
. #8252 + A *-91-089736
. COOK COUNTY RECORDER

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