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IN THE UNITED STATES DISTRICT COURT 1 6 6  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

94975166

THE RESOLUTION TRUST CORPORATION  
as Conservator of Transohio  
Federal Savings Bank, a  
Federally Chartered Institution,

Plaintiff,

vs.

AMERICAN NATIONAL BANK AND TRUST  
COMPANY OF CHICAGO, a National  
Bank Association, as Trustee  
under Trust Agreement dated  
June 18, 1967 and known as  
Trust Number 102936-04, et al.,

Defendants.

No. 92 C 6151

JUDGE NORDBERG

DEPT-01 RECORDING \$45.00  
T42222 TRAN 1569 11/16/94 15:41:00  
46861 + KE \*94-975166  
COOK COUNTY RECORDER

AND RELATED COUNTERCLAIMS.

## JUDGMENT OF FORECLOSURE AND SALE

THIS CAUSE comes before the Court for entry of Judgment of Foreclosure and Sale, and the Counter-plaintiffs, AMERICAN ELECTRIC CONSTRUCTION COMPANY, an Illinois corporation ("AMERICAN ELECTRIC"), TESSAROLO PLASTERING & DRYWALL, INC., an Illinois corporation ("TESSAROLO"), MILLAR ELEVATOR SERVICE COMPANY, a Delaware corporation ("MILLAR ELEVATOR"), CHICAGO MECHANICAL, INC., an Illinois corporation ("CHICAGO MECHANICAL"), SHANNON PLUMBING CORPORATION, an Illinois corporation ("SHANNON PLUMBING"), AUBURN SUPPLY CO., an Illinois corporation ("AUBURN SUPPLY"), LINDSEY MECHANICAL CONTRACTOR, an Illinois corporation ("LINDSEY MECHANICAL"), and JIM McCARTHY d/b/a JIM McCARTHY CONSTRUCTION, a sole proprietorship having its principal place of business in Cook County, Illinois ("McCARTHY CONSTRUCTION") (hereinafter collectively referred to as "Counter-plaintiffs"),

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MECHANICAL and MORTGAGE CONSTRUCTION having been entered on CHICAGO MECHANICAL, SHANNON PLUMBING, AUBURN SUPPLY, LINDSEY judgment of AMERICAN ELECTRIC, TESSAROLO, MILLAR ELEVATOR, and an order granting the Motions for Partial Summary judgment and the subject matter hereto; and that this Court now has jurisdiction over these Counter-defendants during the progress of this cause as required by law, law that due and proper notice has been given to these Counter-defendants of summons or otherwise all in the manner provided by have been duly and properly brought before the Court through THE RTC, 185 N. WABASH, C.J. INDUSTRIES, and TRUST NO. 102836-04, fully advised in the premises, and that the Counter-defendants, and record in this cause, and having heard the evidence and being above Counter-defendants, and the Court, having examined the file have commenced their motions by filing counterclaims against the AND it appearing to the Court that the Counter-plaintiffs the jurisdiction of this Court; defendants, by and through their attorneys, having submitted to 04" (hereinafter collectively referred to as "Counter-CHICAGO as Trustee under Trust No. 102836-04 ("TRUST NO. 102836-INDUSTRIES"), and AMERICAN NATIONAL BANK & TRUST COMPANY OF C.J. INDUSTRIES, INC., an Illinois corporation ("C.J. NORTH WABASH, an Illinois Limited Partnership ("185 N. WABASH"), Savings Bank, a federally chartered institution (the "RTC"), 185 RESOLUTION TRUST CORPORATION, as Conservator of TransOhio Federal by and through their attorneys, and the Counter-defendants, THE

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August 11, 1994 against the above-referenced Counter-defendants subsequent to the filing of their answers to the Counter-plaintiffs' counterclaims and the Court having directed the parties to tender this draft Order of Foreclosure to the Court;

AND it further appearing to the Court that due notice of the presentation of this judgment has been given to all parties entitled thereto, and the Court being fully advised in the premises:

## THE COURT FINDS AS FOLLOWS:

1. The equities in this case are with the Counter-plaintiffs, AMERICAN ELECTRIC, TESSAROLO, MILLAR ELEVATOR, CHICAGO MECHANICAL, SHANNON PLUMBING, AUBURN SUPPLY, LINDSEY MECHANICAL and MCCARTHY CONSTRUCTION, and the material allegations with respect to their foreclosure of mechanic lien claims in Counter-plaintiffs' Counterclaims have been proven, thus entitling them to the relief sought and prayed for as set forth hereinafter.

2. This Court has jurisdiction of the subject matter of this cause and of all the parties hereto.

3. Counter-Defendants 185 N. WABASH, C.J. INDUSTRIES, and TRUST NO. 102836-04 or their beneficiaries, predecessors, successors and assigns, were during the relevant time herein, and are until this date, the owners of the following described interest in real estate:

A 60-year leasehold interest created by a certain "Ground Lease" dated August 27, 1987 and recorded with the Cook County Recorder of Deeds as Document No. 87488037, as amended by a certain "First Amendment to

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Ground Lease dated June 22, 1988 and recorded as Document No. 80288531, in the following described parcels:

Parcel A: Lots 3 to 6, both inclusive, in Richard T. Haines Subdivision of Lots 1 to 5 in Block 10 of Fort Dearborn addition to Chicago, in Section 10, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

Parcel B: Leasehold estate created in and by that certain indenture of lease executed by Lucy J. Atwater, as lessor, to Chauncy Keep, as lessee, dated January 31, 1912 as document 4547021, as amended by three supplemental leases or agreements by the same parties, the first dated June 30, 1916 and recorded July 19, 1916 as document 5913464, the second dated June 30, 1922 and recorded July 19, 1922 as document 7580239, and the third dated March 1, 1926 and recorded June 16, 1926 as document 9310235, as further amended by agreement dated January 25, 1961 and recorded February 7, 1961 as document 18079865, demising and leasing for a term of 98 years commencing February 1, 1912 and ending January 31, 2110, the following described land: Lots 1 and 2 in Richard T. Haines Subdivision of Lots 1 to 5 in Block 10 of Fort Dearborn addition to Chicago in Section 10, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

(The above-described leasehold interest in Parcel A and B is hereinafter referred to as the "Leasehold Interest.")

4. C.J. INDUSTRIES contracted with MID AMERICA DEVELOPERS, INC., as Construction Manager, and/or Patterson Construction, as General Contractor, for the construction of certain improvements on the premises in question. C.J. INDUSTRIES executed these contracts as the agent of Counter-Defendant, AMERICAN NATIONAL BANK AND TRUST COMPANY as Trustee under Trust No. 102836-04, which trust was the owner of the leasehold interest in the afore-

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described premises. The sole beneficiary of that trust during the relevant time in question was 185 NORTH WABASH, an Illinois Limited Partnership. On the dates set forth below, MID AMERICA DEVELOPERS and/or Patterson Construction entered into contracts with the following Counter-Plaintiffs:

<u>Counter-Plaintiff</u>	<u>Date(s) of Contracts</u>
AMERICAN ELECTRIC	July 1, 1988 and February 29, 1988 through January 23, 1990
TESSAROLO	April 4, 1988
MILLAR ELEVATOR	July 12, 1989
CHICAGO MECHANICAL	October 18, 1988 and December 20, 1988
SHANNON PLUMBING	April 1, 1989
AUBURN SUPPLY	March 16, 1989
LINDSEY MECHANICAL	May 15, 1989
MCCARTHY CONSTRUCTION	May 15, 1990

5. Pursuant to said contracts, Counter plaintiffs furnished labor and/or delivered said building materials, the last of which were delivered on the following dates:

<u>Counter-Plaintiff</u>	<u>Date</u>
AMERICAN ELECTRIC	January 24, 1990
TESSAROLO	January 5, 1990
MILLAR ELEVATOR	July 1, 1990 and February 28, 1991
CHICAGO MECHANICAL	December 18, 1989
SHANNON PLUMBING	January 29, 1990
AUBURN SUPPLY	June 4, 1990

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LINDSEY MECHANICAL

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MCCARTHY CONSTRUCTION

August 1, 1990

6. Said labor and/or building materials became a permanent part of the building on the above-described premises.

7. On the dates set forth below, the following Counter-plaintiffs served written notice of their claims for mechanics lien on Counter-defendants 185 N. WABASH, C.J. INDUSTRIES, and TRUST NO 102836-04:

<u>Counter-Plaintiff</u>	<u>Date of Notice</u>
AMERICAN ELECTRIC	April 20, 1990
TESSAROLD	March 9, 1990
CHICAGO MECHANICAL	March 15, 1990
SHANNON PLUMBING	February 20, 1990
AUBURN SUPPLY	June 28, 1990
LINDSEY MECHANICAL	October 4, 1990
MCCARTHY CONSTRUCTION	October 17, 1990

Furthermore, the following Counter-plaintiffs also served written notice of their claims for mechanics lien on the RTC's predecessor, TRANSHIO SAVINGS BANK, on the dates set forth below:

<u>Counter-Plaintiff</u>	<u>Date of Notice</u>
CHICAGO MECHANICAL	March 15, 1990
AUBURN SUPPLY	June 28, 1990

8. On the dates set forth below, the following Counter-plaintiffs caused their claims for lien to be filed of record in the office of the Cook County Recorder of Deeds:

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<u>Counter-Plaintiff</u>	<u>Date Filed</u>
AMERICAN ELECTRIC	May 7, 1990
TESSAROLO	April 16, 1990
MILLAR ELEVATOR	August 8, 1990 and March 5, 1991
CHICAGO MECHANICAL	March 15, 1990
SHANNON PLUMBING	February 20, 1990
AUBURN SUPPLY	July 11, 1990
LINDSEY MECHANICAL	October 4, 1990
MCCARTHY CONSTRUCTION	November 8, 1991

9. On account of the material and/or labor furnished by Counter-plaintiffs, there is due said Counter-plaintiffs the following amounts plus ten percent (10%) interest from the date those amounts became due pursuant to 770 ILCS 60/1:

<u>Counter-Plaintiff</u>	<u>Principal Balance Due</u>	<u>Interest at 10% Per Annum through 9/1/94</u>	<u>Total Principal &amp; Interest Due as of 9/1/94</u>
AMERICAN ELECTRIC	\$191,470.57	\$88,165.26	\$279,635.83
TESSAROLO	\$120,211.41	\$56,106.82	\$176,318.23
MILLAR ELEVATOR	\$ 69,546.03 \$ 4,504.84	\$33,124.81 \$ 1,790.89	\$102,670.84 \$ 6,295.73
CHICAGO MECHANICAL	\$ 75,300.99	\$33,571.79	\$108,872.78
SHANNON PLUMBING	\$ 45,578.25	\$25,307.76	\$ 70,886.01
AUBURN SUPPLY	\$ 19,131.11	\$ 9,455.64	\$ 28,586.75
LINDSEY MECHANICAL	\$ 69,580.62	\$33,541.63	\$103,122.25
MCCARTHY CONSTRUCTION	\$ 4,895.00	\$ 1,909.10	\$ 6,804.10

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10. As a result of the proceedings herein, the following Counter-plaintiffs were required to expend the following sums for court costs herein and that said sums should be allowed as an additional charge against the subject premises pursuant to 770 ILCS 60/17:

AMERICAN ELECTRIC	\$6,984.39
TESSAROLO	\$ 368.33

11. There is now due and owing to the Counter-plaintiffs for principal, interest and costs, the following sums:

<u>Counter-plaintiff</u>	<u>Amount</u>
AMERICAN ELECTRIC	\$286,640.22
TESSAROLO	\$176,704.09
MILLAR ELEVATOR	\$102,670.84 \$ 6,295.73
CHICAGO MECHANICAL	\$108,872.78
SHANNON PLUMBING	\$ 70,886.01
AUBURN SUPPLY	\$ 28,586.75
LINDSEY MECHANICAL	\$103,122.25
MCCARTHY CONSTRUCTION	\$ 6,804.20

12. By reason of the foregoing, the Counter-plaintiffs, AMERICAN ELECTRIC, TESSAROLO, MILLAR ELEVATOR, CHICAGO MECHANICAL, SHANNON PLUMBING, AUBURN SUPPLY and LINDSEY MECHANICAL are each entitled to a lien upon the Leasehold Interest hereinbefore described, for the amounts so found due, under and by virtue of the Illinois Mechanics Lien Act, 770 ILCS 60/1 et seq. (1992).

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13. Counter-defendant the RTC has an interest in the aforesaid property by reason of a certain mortgage dated June 28, 1988. However, issues of priority and enhancement as between the RTC and Counter-plaintiffs herein have been reserved for adjudication at a later date, and nothing herein shall be deemed to adjudicate those issues.

**IT IS THEREFORE HEREBY ORDERED, ADJUDGED AND DECREED:**

A. Counter-Plaintiffs, AMERICAN ELECTRIC, TESSAROLO, MILLAR ELEVATOR, CHICAGO MECHANICAL, SHANNON PLUMBING, AUBURN SUPPLY and LINDSEY MECHANICAL have valid and enforceable liens upon the aforescribed Leasehold Interest for the amounts previously listed together with interest thereon as set forth above and costs.

B. Counter-defendants 185 N. WABASH, C.J. INDUSTRIES, and TRUST NO. 102836-04, or someone on their behalf, shall pay to the Counter-plaintiffs, AMERICAN ELECTRIC, TESSAROLO, MILLAR ELEVATOR, CHICAGO MECHANICAL, SHANNON PLUMBING, AUBURN SUPPLY and LINDSEY MECHANICAL are entitled to be paid within seven (7) days from the date hereof, the following sums which include interest thereon at a rate of ten percent (10%) per annum and the costs of suit:

<u>Counter-Plaintiff</u>	<u>Amount</u>
AMERICAN ELECTRIC	\$286,640.22
TESSAROLO	\$176,704.09
MILLAR ELEVATOR	\$102,670.84
	\$ 6,295.73
CHICAGO MECHANICAL	\$108,872.78

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SHANNON PLUMBING	\$ 70,886.01
AUBURN SUPPLY	\$ 28,586.75
LINDSEY MECHANICAL	\$103,122.25
MCCARTHY CONSTRUCTION	\$ 6,804.10

C. In case of default of said payment being made as aforesaid by Counter-defendants 165 N. WABASH, C.J. INDUSTRIES, and TRUST NO. 102836-04, the Leasehold Interest in the premises described above, which premises are improved with a building on Parcels 1 and 2, or so much thereof as may be sufficient to satisfy the amount due the Counter-plaintiffs, AMERICAN ELECTRIC, TESSAROLO, MILLAR ELEVATOR, CHICAGO MECHANICAL, SHANNON PLUMBING, AUBURN SUPPLY, LINDSEY MECHANICAL and MCCARTHY CONSTRUCTION for principal and interest, the costs of this suit and other fees as aforesaid, disbursements and commissions, and which may be sold separately without material injury to the parties' interest, shall be sold at public auction for cash to the highest bidder, by a Special Commissioner at such time as shall be prescribed.

D. The Special Commissioner shall execute this Judgment of Foreclosure and Sale; shall give public notice of the time, place and terms of such sale by publishing once in each week for four consecutive weeks in a secular newspaper of general circulation published in Cook County, Illinois, the first publication thereof to be no more than forty-five (45) days prior to the date of sale, and the last such notice to be published not less than seven (7) days prior to sale; and the Special Commissioner may at his/her discretion, for good cause, continue said sale from time

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to time, by appearing and notifying all parties present at the date and time of such continuance, without further publication of notice.

E. Upon making such sale, the Special Commissioner shall issue a certificate of sale to the successful bidder and record a duplicate thereof as required by law. Said Commissioner shall, with all convenient speed, report the same to the Court for its approval and confirmation. Upon obtaining approval and confirmation of the sale, the Special Commissioner shall deposit the proceeds of said sale into the registry of the Court, in an interest-bearing account, until there is a determination of: (1) the amount due the RTC; and (2) the issue of priority and enhancement as between the RTC and Counter-plaintiffs herein.

F. If the Leasehold Interest so sold shall not have been redeemed within the time allowed by the laws of this state, as hereinafter set forth, the Special Commissioner, upon production of any certificate of sale aforesaid by the purchaser or purchasers, his or their heirs, successors, and/or assigns, shall execute to the legal holder or holders thereof, a deed or other appropriate instrument of conveyance of the Leasehold Interest and such certificate described.

G. The period of redemption shall expire and terminate six (6) months after sale by the Special Commissioner and that thereafter, Counter-defendants 185 N. WABASH, C.J. INDUSTRIES and TRUST NO. 102836-04 and all persons claiming under them shall be

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forever barred and foreclosed from all right to redeem and claim an interest in and to said Leasehold Interest.

H. Upon the execution and delivery of the deed or instrument as aforesaid, the grantee or grantees, his or their heirs, successors, or assigns, shall be let into possession of the premises, and that any of the parties of this cause who may be in possession of said premises, or any part thereof, or any person who since the commencement of this suit shall have come into possession under them or any of them, shall, upon production of said deed or instrument and service of a certified copy of this judgment, surrender possession thereof to such grantee or grantees, his or their heirs, successors or assigns; and in default of so doing, that a writ of assistance may issue in accordance with the practice of this court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court hereby retains jurisdiction of the subject matter of this cause and all the parties hereto for the purposes of modifying or enforcing this Judgment.

DATED this 10<sup>th</sup> day of September, 1994.

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS

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H. Stuart Cunningham  
CLERK

Office of the Clerk

J. Robert Geiman  
Peterson & Ross  
200 East Randolph Drive  
Suite 7300  
Chicago, IL 60601

Case Number: 192-cv-06151

Title: Resolution Trust v. Amer Natl Bk & Trst

Assigned Judge: Honorable John A. Nordberg

MINUTE ORDER of 9/21/94 by Hon. John A. Nordberg : Motion of counterplaintiff Jim McCarthy Construction to amend judgment order to include the name "McCarthy Construction" in said paragraphs A and B of said judgment order, and that said judgment order be amended nunc pro tunc as of 9/1/94 is granted. [185-1] Mailed notice

This order was entered on the docket by the Clerk September 26, 1994

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by ICMS, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

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