



99693209

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

TMS MORTGAGE INC. D/B/A THE MONEY)
STORE,)

Plaintiff,)

v.)

ERIK JONES, a/k/a ERIK M. JONES, a)
bachelor; WILLIAM LEVY; UNKNOWN HEIRS)
AND LEGATEES OF ERIK JONES, IF ANY;)
UNKNOWN TENANTS; UNKNOWN OWNERS)
AND NON-RECORD CLAIMANTS;)
AMERICAN NATIONAL BANK AND TRUST)
COMPANY OF CHICAGO;)

Defendants,)

-----)
WILLIAM LEVY,)

Counter-Plaintiff,)

v.)

AMERICAN NATIONAL BANK AND TRUST)
COMPANY OF CHICAGO, as Trustee under)
Trust Agreement dated May 1, 1998 and known)
as Trust No. 124064-01; ERIK JONES; TMS)
MORTGAGE INC. D/B/A THE MONEY)
STORE; UNKNOWN OWNERS; UNKNOWN)
TENANTS; and NON-RECORD CLAIMANTS,)

Counter-Defendants.)

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1999-07-20 16:25:17
Cook County Recorder 45.50

No. 98 CH 14011

JUDGMENT OF FORECLOSURE AND SALE

This cause coming to be heard on the Motion For Default and For Judgment Of
Foreclosure And Sale filed by Counter-Plaintiff William Levy, and the Court finding that due and
proper notice has been given; that Counter-Plaintiff has commenced this action by filing its

Box 340

Counterclaim for Foreclosure of Mortgage and Other Relief ("Counterclaim") on certain improved real property commonly known as 6243 South Ashland, Chicago, Illinois ("the Ashland Property") against Counter-Defendants American National Bank and Trust Company of Chicago, Trustee under Trust Agreement dated May 1, 1998 and known as Trust No. 124064-01 ("Borrower"), Erik Jones ("Beneficiary"), Unknown Owners, and Non-Record Claimants; and on certain improved real property commonly known as 6406 South Richmond, Chicago, Illinois ("the Richmond Property") against Counter-Defendant Erik Jones, Unknown Owners, and Non-Record Claimants; and finding further that:

I. JURISDICTION

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

B. The following Counter-Defendants have each been properly served with a summons of the complaint and a copy of the Amended Counterclaim on the dates shown and have not appeared or filed an answer in this matter:

	<u>Service Date</u>
(a) American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated May 1, 1998 and known as Trust No. 124064-01;	12/8/98 and 1/29/99
(b) Erik Jones	10/22/98 and 1/29/99
(c) Unknown Owners	Publication 02/03, 02/10 and 02/17/99
(d) Non-record Claimants	Publication 02/03, 02/10 and 02/17/99

C. The affidavits required to make Unknown Owners and Non-record Claimants Counter-Counter-Defendants to this action were filed, and "Unknown Owners and Non-record Claimants" have been duly made party Counter-Defendants herein as provided by law.

a) The persons designated and Unknown Owners and Non-record Claimants include other persons interested in this action who may claim to have some right, title, interest or lien in or on some part of the Property. The names of each such other persons interested in this action are unknown to Counter-Plaintiff and its counsel, and cannot be ascertained upon diligent inquiry. All such other persons are therefore made party Counter-Defendants to this action by the name and description, Unknown Owners and Non-record claimants.

b) Counter-Defendants Unknown Owners and Non-record Claimants were properly served by publication on February 11, February 18 and February 25, 1999 as provided by law, and have failed to plead to the Verified Counterclaim within the time required by law.

II. EVIDENTIARY FINDINGS

D. All material allegations of the Verified Counterclaim are true and proven and are supported by the Verified Counterclaim.

E. The evidence of the indebtedness, a Promissory Note ("Note") and the security foreclosed, a Mortgage for the Ashland Property ("Ashland Mortgage"), and a Mortgage for the Richmond Property ("Richmond Mortgage") (collectively, "the Mortgages"), have been exhibited in open Court and have been attached to Counter-Plaintiff's First Amended Verified Counterclaim

as Exhibits "A" and "D". Exhibits "A" and "D" are admitted into evidence. Leave is given to withdraw the originals of the documents and substitute copies.

III. FEES AND COSTS

F. Counter-Plaintiff has been compelled to employ and retain attorneys to prepare and file the Verified Counterclaim and to represent and advise the Counter-Plaintiff in the foreclosure of the Mortgages, and the Counter-Plaintiff has and will thereby become liable for the usual, reasonable and customary fees of the attorneys.

G. The Counter-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, taxes, expenses and disbursements incurred in connection with the foreclosure, including, without limiting the generality of the foregoing, attorneys' and 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.

H. Under the terms of the Mortgages, all such advances, costs, attorneys' fees and other fees, expenses and disbursements are made a lien upon the mortgaged property and all personal property thereon, and the Counter-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.

I. In order to protect the liens on the Mortgages, it may or has become necessary for Counter-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.

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

IV. ULTIMATE FINDINGS

K. The equities in this cause are with the Counter-Plaintiff, who is entitled to a Judgment of Foreclosure and Sale in accordance with the prayer of the Verified Amended Counterclaim together with interest thereon at the statutory rate after the entry of this judgment and additional court costs, expenses of sale, and additional costs and expenses that Counter-Plaintiff may incur as set forth in the Mortgages, which shall be included in an amended or additional judgment at the time this Court enters an order confirming the sale provided for herein.

L. There is due Counter-Plaintiff upon the Note secured by the Mortgages and Counter-Plaintiff has a valid and first lien upon the Property described in Count I of the Amended Verified Counterclaim and all personal property thereon hereinafter described, and a valid lien subordinate only to Plaintiff TMS Mortgage, Inc. d/b/a The Money Store upon the Richmond Property described in Count II of the Amended Verified Counterclaim and all personal property thereon hereinafter described, in the following amounts:

(1) For fees and costs:

- | | |
|--|------------|
| a. Normal, reasonable, usual and customary attorneys' fees due Katz, Randall & Weinberg as of May 24, 1999 | \$3,510.00 |
|--|------------|

b. Costs	\$1,531.47
Filing Fee - \$220.00	
Publication - \$561.44	
Minutes of Foreclosure - \$500.00	
Recording of Counterclaim - \$168.00	
Copies - \$82.03	

Total fees and costs: \$5,041.47

(2) For unpaid principal, interest, late fees and taxes:

a. Principal balance as of May 24, 1999:	\$40,000.00
b. Interest at regular Note Rate of 18% from June 10, 1998 to and including September 14, 1998:	\$1,720.00
c. Interest from and including September 14, 1998 to and including May 24, 1999 at the default rate of 28%:	\$7,839.72
d. Late fees	\$102.00
e. Taxes paid	\$800.00

Total unpaid principal, interest and late fees as of May 24, 1999:	<u>\$50,461.72</u>
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TOTAL AMOUNT DUE:	<u>\$55,503.19</u>
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M. The court has reviewed the foregoing costs and fees and the sum of attorneys' fees and costs allowed herein were necessarily incurred and are fair, reasonable, customary and proper charges to be allowed to Counter-Plaintiff as attorneys' fees and costs in this proceeding in accordance with the terms of the Note and Mortgages, which has been added to and becomes a part of the indebtedness due to Counter-Plaintiff.

N. Counter-Plaintiff is the holder of valid Mortgages and Counter-Plaintiff's Mortgages are valid liens upon the Properties described herein and all personal property thereon, which is prior, paramount and superior to all other mortgages, claims or interests and liens upon the Properties and all personal property thereon of all other parties, except for real estate taxes and special assessments, if any, and except for the prior and superior lien held by TMS Mortgage, Inc. d/b/a The Money Store on the Richmond Property (Count II).

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that a Judgment For Foreclosure And Sale on Counts I and II is granted to Counter-Plaintiff and against all Counter-Defendants.

IT IS FURTHER ORDERED THAT Judgment is granted to Counter-Plaintiff and against Counter-Defendant Erik Jones on Count III in the amount of \$55,503.19, plus post-judgment interest.

IT IS FURTHER ORDERED AS FOLLOWS:

I. ORDER FOR FORECLOSURE

1. In the event Counter-Plaintiff is not paid the amount due of \$55,503.19 as set forth in Paragraph L, before expiration of five days from and after the date of this judgment, plus interest at the statutory judgment rate from the date of judgment, the mortgaged real estate (the Ashland Property and the Richmond Property), with all improvements, fixtures and appurtenances thereto and the personal property, as described herein, 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 Counter-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 attorneys' fees that Counter-Plaintiff may incur and taxes and expenses that may become due under the Mortgages after the date of this judgment or that may have accrued or become due prior to this Judgment under the Mortgages but have not been included herein.

2. In the event the Counter-Plaintiff is a purchaser of the mortgaged real estate and personal property at such sale, the Counter-Plaintiff may offset against the purchase price of such real estate and personal property the amounts due under the judgment for foreclosure and order confirming the sale.

3. The Ashland Property and the Richmond Property herein referred to and hereby foreclosed and directed to be sold are described as follows:

a. The Ashland Property

Lots 29 (except that part taken for widening Ashland Avenue) in Staples Subdivision of the West 1/2 of the Southwest 1/4 of the Southwest 1/4 of the Southwest 1/4 of Section 17, Township 38 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

PIN: 20-17-325-016-0000

Address: 6243 South Ashland Avenue, Chicago, Illinois

b. The Richmond Property

Lot 1 in the resubdivision of Lots 42, 43, 44, 45, 46 and the South 15 feet of Lot 47 in Block 4, in the East Chicago Lawn, being Swannell's Subdivision of the West 1/2 of the East 1/2 of the Northwest 1/4 of Section 24, Township 38 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois.

PIN: 19-24-113-002-0000

Address: 6405 South Richmond, Chicago, Illinois

The personal property foreclosed and directed to be sold, if any, is described on Exhibit A attached to this Judgment.

4. In the event of such sale, the Counter-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 or personal property described herein.

5. A deed and bill of sale 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 and personal property in accordance with statutory provisions.

II REDEMPTION

6. This is a foreclosure of a mortgage of commercial real estate and not a foreclosure of a mortgage of residential real estate with respect to Borrower or Beneficiary.

7. Under the Mortgages, Counter-Defendants waived any and all rights of redemption from the foreclosure sale of the Property which waiver is fully effective and binding as to all of the parties hereto.

III. ORDER FOR JUDICIAL SALE

8. The real estate and personal property shall be sold for cash by Inland County Judicial Sales Corporation ("Selling Officer"), in accordance with the applicable statutory provisions at a time and place to be selected by the Counter-Plaintiff.

9. The notice of sale shall be published pursuant to 735 ILCS 5/15-1507 at least once each week for three consecutive calendar weeks (Sunday through Saturday), 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 7 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 may (except in Cook County, Illinois) 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. The public notice shall include, along with the information required by 735 ILCS 5/15-1507, the following additional terms of sale: (i) any successful bidder except Counter-Plaintiff shall make at the time of sale a non-refundable payment of 10% of the successful bid amount by cash or certified funds, (ii) the balance shall be paid by cash or certified funds within 24 hours of the date of sale.

10. 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 45 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.

11. The sale may be adjourned at the discretion of Counter-Plaintiff or the Selling Officer. 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 60 days after the last scheduled sale, notice of any adjourned sale need not be given.

12. Upon the sale of the mortgaged real estate and personal property, the Selling Officer shall give a certificate of sale and a bill of sale to the purchaser and cause such certificate of sale to be recorded. The certificate and bill of sale shall be freely assignable by endorsement thereon.

IV. TRANSFER OF TITLE

13. Upon or after confirmation of the sale, the Selling Officer or the court shall execute a deed and bill of sale 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 and bill of sale 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 and bill of sale, but such deed and bill of sale shall not be construed to contain any covenant on the part of the person executing them.

14. Delivery of the deed and bill of sale executed on the sale of the real estate and personal property, 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

15. 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 applicable Illinois Compiled Statutes, and other legal expenses incurred pursuant to the Note and Mortgage or real estate taxes paid by Counter-Plaintiff not otherwise included in this Judgment;
- (c) to William Levy as adjudicated in this judgment of foreclosure and the order confirming sale;
- (d) remittance of any surplus thereafter to be held by the person appointed by the court to conduct the sale until further order of the court. If there is a surplus, such person conducting the sale shall send written notice to all parties to the proceeding advising them of the amount of the surplus, and that the surplus shall be held until a party obtains a court order for its distribution or until, in the absence of an order, the surplus is forfeited to the State.

16. The Selling Officer shall file a report of sale with the clerk of this court specifying the amount of proceeds of sale realized and the disposition thereof.

17. If the money arising from said sale shall be insufficient to pay the amounts due to Counter-Plaintiff with interest and the costs and expenses of sale, the Selling Officer shall specify the amount of such deficiency in the report of sale.

VI. POSSESSION

18. Counter-Plaintiff is authorized to take possession of said real estate upon and after default by the terms of the mortgage and security agreement foreclosed; Counter-Plaintiff has prevailed on a final hearing of this cause; Counter-Plaintiff has requested to be placed in possession of said real estate and personal property, and Counter-Defendant-mortgagor has not objected and shown good cause for having possession of said premises hereafter. After the entry of this judgment, Counter-Plaintiff shall, at its sole election and discretion, have exclusive

possession of said real estate and personal property and after the sale ordered herein, the purchaser shall have Counter-Plaintiff's right to be placed in possession of said real estate and personal property.

VII. STIPULATION

19. This Order of Foreclosure and Sale for the Richmond Property (Count II) and the rights of the parties arising herefrom, is subject to the Stipulation entered into between Plaintiff TMS Mortgage, Inc., d/b/a The Money Store and Counter-Plaintiff William Levy dated January 28, 1999 and the Judgment of Foreclosure and Sale entered by this Court on February 19, 1999.

VIII. FINAL ORDER

20. 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 Judgment or an appeal therefrom.

Date: _____

Entered: **ENTERED**
MAY 24 1999
JUDGE
LESTAGED. FOREMAN JUDGE

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