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PLACITA JUDGMENT

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(10-84) CCDCH-6

UNITED STATES OF AMERICA

STATE OF ILLINOIS,
COUNTY OF COOK ss.

THOMAS RAKOWSKI

PLEAS, before the Honorable
one of the Judges of the Circuit Court of Cook County, in the State of Illinois, holding a branch Court of said
Court, at the Court House in said County, and State, on
June 20,
88
in the year of our Lord, one thousand nine hundred and
and of the Independence
twelfth
of the United States of America, the two hundredth and

THOMAS RAKOWSKI

PRESENT: - The Honorable
Judge of the Circuit Court of Cook County.

RICHARD M. DALEY, State's Attorney

JAMES E. O'GRADY, Sheriff
RICHARD J. ELROX

Attest: MORGAN M. FINLEY, Clerk.

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

*OK
for
filing*

CARL H. KLEHM, ARNOLD KLEHM, and ROY G. KLEHM,
d/b/a THE CHARLES KLEHM & SON NURSERY, an
Illinois Partnership,

Plaintiffs,

v.

GRECIAN CHALET, LTD., an Illinois corporation,
PETER AIVALIOTIS, KOSTAS KONSTANTOPOULOS, BANK &
TRUST COMPANY OF ARLINGTON HEIGHTS, u/t/a 2635,
ASC ARCHITECTS, INC., BANK OF PALATINE, CHICAGO
TITLE & TRUST COMPANY, as Trustee, and UNKNOWN
OWNERS,

Defendants.

No. 82 CH 9991

BANK OF PALATINE,

Counterplaintiff,

v.

PYRGOS, LTD., an Illinois corporation, PETER
AIVALIOTIS, KOSTAS KONSTANTOPOULOS, BANK & TRUST
COMPANY OF ARLINGTON HEIGHTS, u/t/a 2635,
VASILIOS KONSTANTOPOULOS, DINA AIVALIOTIS VOULA
KONSTANTOPOULOS, MARY JANE KONSTANTOPOULOS, ASC
ARCHITECTS, CHICAGO TITLE & TRUST COMPANY,
PATRICK PUCCIA, CARL KLEHM, ARNOLD KLEHM & ROY
KLEHM d/b/a THE CHARLES KLEHM & SON NURSERY,
UNITED STATES OF AMERICA SMALL BUSINESS ADMIN-
ISTRATION, M & K STORE FIXTURES, SIDNEY R. OLSEN,
REGISTER OF DEEDS, MICHAEL MARKOPOULOS, MARK
DALEN, UNKNOWN LIENHOLDERS, and UNKNOWN OWNERS,

Counterdefendants.

JUDGMENT OF FORECLOSURE AND SALE

This cause coming on to be heard on Bank of
Palatine's Verified Motion for Entry of Judgment of Fore-
closure and Sale on the Countercomplaint of the Bank of

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Palatine to Foreclose Mortgages and pursuant to the decision of the Illinois Appellate Court in Klehm v. Grecian Chalet, Ltd., 164 Ill.App.3d 610 (1987), and the Court having been tendered a settlement agreement dated June 16, 1988 and the Court being fully advised in the premises, the Court FINDS:

1. Bank of Palatine ("counterplaintiff Bank") brought this three-count countercomplaint on May 8, 1984 to foreclose three mortgages on commercial property located at 519 W. Algonquin Road, Arlington Heights, Illinois and formerly known as the Grecian Chalet restaurant. The mortgages are identified in paragraph 6, below, and they secure three loans in the combined principal amount of \$700,000.00. On September 23, 1985, certain of the mortgage foreclosure counterdefendants, filed a counterclaim for damages against counterplaintiff Bank.

2. After a bench trial, the trial court denied counterplaintiff Bank relief on all counts and also dismissed the counterclaim against the Bank. Counterplaintiff Bank appealed the ruling on its foreclosure countercomplaint. No appeal was taken from the trial court's dismissal of the counterclaim.

3. On November 12, 1987, the Illinois Appellate Court reversed the trial court's ruling, holding that counterplaintiff Bank was entitled to foreclose all three mortgages. Klehm v. Grecian Chalet, 164 Ill. App. 3d 610 (1st Dist. 1987). The appellate court denied rehearing on

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January 25, 1988. Id. This Court enters these findings pursuant to the Appellate Court's decision and mandate.

4. The Court has jurisdiction of the subject matter of this cause and the parties hereto.

5. (a) Counterdefendant Patrick Puccia was duly served with summons and a copy of the Countercomplaint herein and has failed to file an answer in this case, and an order of default was entered against him on July 24, 1984.

(b) Counterdefendant United States of America, Small Business Administration was duly served with summons and a copy of the Countercomplaint herein and has failed to file an appearance or answer in this case, and an order of default was entered against it on July 24, 1984.

(c) Counterdefendant ASC Architects, Inc. was duly served with summons and a copy of the Countercomplaint herein and has failed to file an answer in this case, and an order of default was entered against it on January 22, 1986.

(d) Counterdefendant Chicago Title was duly served with summons and a copy of the Countercomplaint herein and has failed to file an appearance or answer in this case, and an order of default was entered against it on January 22, 1986.

(e) The Countercomplaint herein was duly served on Unknown Owners by publication on June 3, 10, and 17, 1985, and no unknown owners have filed an appearance or an answer in this case. An order of default was entered against all unknown owners on January 22, 1986.

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(f) Counterdefendant Registrar of Titles has stipulated and consented to the Court's jurisdiction and the entry of this judgment.

6. At all relevant times The Bank and Trust Company of Arlington Heights, or its successor trustee NBD Trust Company of Illinois, as Trustee under Trust Agreement dated November 15, 1980, and known as Trust Number 2635, owned the fee simple title to the real estate commonly known as 519 Algonquin Road, Arlington Heights, Illinois and legally described as follows:

Lot 1 and Lot 2 in Donald Larson's Re-subdivision of part of Lot 7 in the Sub-division of Joseph A. Barne's Farm in Section 16, Township 41 North, Range 11, East of the Third Principal Meridian, according to Plat thereof registered in the Office of the Registrar of Titles of Cook County, Illinois on September 22, 1967, as Document Number LR 2,349,233, in Cook County, Illinois.

Said Trustee executed and delivered the following mortgages, trust deeds and notes which are owned by counterplaintiff Bank:

(a) Mortgage dated March 9, 1981, and filed in the office of Sidney R. Olsen, Registrar of Titles of Cook County, Illinois, on April 7, 1981, as document number LR 3,210,301, to secure payment of a Note in the face amount of \$170,000.00 personally guaranteed by Peter Aivaliotis, Kostas Konstantopoulos, Vasilios Konstantopoulos, Dina Aivaliotis, Voula Konstantopoulos and Mary Jane Konstantopoulos.

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(b) Trust Deed dated March 9, 1981, and filed in the office of Sidney R. Olsen, Registrar of Titles of Cook County, Illinois, on April 7, 1981, as document number LR 3,210,302, to secure payment of a Note in the face amount of \$255,000.00 personally guaranteed by Peter Aivaliotis, Kostas Konstantopoulos, Vasilios Konstantopoulos, Dina Aivaliotis, Voula Konstantopoulos, and Mary Jane Konstantopoulos.

(c) Mortgage dated February 16, 1982, and filed in the office of Sidney R. Olsen, Registrar of Titles of Cook County, Illinois, on March 4, 1982 as document number LR 3,251,980, to secure payment of a Note in the face amount of \$275,000.00 executed by Peter (Panagiotis) Aivaliotis, Kostas Konstantopoulos, Michael (Mike) Markopoulos, and Grecian Chalet, Ltd.

7. The Mortgages, Trust Deed and Notes referred to in paragraph 6, above, are valid obligations and counter-plaintiff Bank is entitled to foreclose the Mortgages and Trust Deed. The relative priority of the counter-plaintiff Bank's liens is as follows: the lien arising because of the \$170,000.00 Mortgage (first mortgage) referred to in paragraph 6(a) is first; the lien arising because of the \$255,000.00 Trust Deed (second mortgage) referred to in paragraph 6(b) is second; the lien arising because of the \$275,000.00 Mortgage (third mortgage) referred to in paragraph 6(c) is third.

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8. Each of the Notes referred to in paragraph 6, above, have been and are in default for failure to make payments of principal or interest thereon. The amounts due in principal and interest as of June 20, 1988 are as follows: \$344,674.93 on the \$170,000.00 Note; \$304,615.02 on the \$255,000.00 Note; and \$396,025.19 on \$275,000.00 Note.

9. The first mortgage provides (§ F) that "upon foreclosure of said premises, there shall be allowed and included as in additional indebtedness in the decree of sale all expenditures and expenses together with interest thereon at the rate of 8% per annum, which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraiser's fees, outlays for exhibits attached to pleadings, documentary and expert evidence, stenographer's fees, Master's fees and commissions, court costs, publication costs and costs (which may be estimated as to and include items to be expended after the entry of the decree) of procuring all such abstracts of title, title searches, examinations and reports, guaranty policies, Torrens certificates and similar date and assurances with respect to title as Mortgagee may reasonably deem necessary either to prosecute such suit or to evidence to bidders at any sale held pursuant to such decree the true title to or value of said premises." The first mortgage also provides (§§ A, B) that the mortgagor shall "pay when due and before any penalty attaches thereto all taxes . . . against said property" and that advances by the mortgagee of such taxes or other payments to protect the

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first mortgage lien "shall become so much additional indebtedness . . . and may be included in any decree foreclosing this Mortgage and be paid out of the rents or proceeds of sale of said premises."

10. The defaults of the mortgagor under the first mortgage have required and will require counterplaintiff Bank to incur expenses for legal fees and costs, delinquent real estate taxes, and settlements of lien claims as follows: attorneys fees and costs as set forth below: delinquent real estate taxes and penalties of \$73,740.85; and settlements of lien claims of \$5,000.00. These expenses are reasonable and necessary to protect counterplaintiff Bank's interest in the mortgaged property and are includable in the first mortgage indebtedness.

11. The Trust Deed (second mortgage) foreclosed hereby provides (§§ 1, 2, 5) that payments of real estate taxes by the mortgagee shall be additional indebtedness and included in any decree of foreclosure. The sum of \$159,011.44 has been advanced for such taxes, which amount is includable in the second mortgage indebtedness.

12. As of June 20, 1988, the indebtedness secured by the three mortgages, in the priority for which it shall be paid from the proceeds of the foreclosure sale, is as follows:

- | | |
|---|--------------|
| (a) Redemption of property for unpaid taxes (current) | \$ 73,740.85 |
| (b) First mortgage, principal and interest | \$344,674.93 |

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(c) Attorneys fees and costs (through May 31, 1988)	\$188,481.04
(d) 8% per annum interest on (c)	\$ 22,778.14
(e) Attorneys fees and costs (June 1 through June 16, 1988)	\$ 7,505.00
(f) Settlement of lien claims	\$ 5,000.00
(g) Real estate taxes advanced by second mortgagee	\$159,011.44
(h) Second mortgage, principal and interest	\$304,615.02
(i) Third mortgage, principal and interest	\$396,025.19

In addition, any amounts advanced by counterplaintiff Bank after the entry of this Judgment for taxes, assessments, or charges against the mortgaged property shall be included as additional indebtedness under the first mortgage and paid from the proceeds of the foreclosure sale.

13. The owner of the equity of redemption under all three mortgages is NBD Trust Company of Illinois, as Trustee under Trust Agreement dated November 15, 1980, and known as Trust Number 2635 (and as successor land trustee to The Bank and Trust Company of Arlington Heights). The corporate Trustee has waived and released its equity and right of redemption under all three mortgages pursuant to a settlement agreement with counterplaintiff Bank, a copy of which has been tendered to the Court. In addition, the third mortgage provides (§ 3) that the Trustee, as mortgagor, expressly waives and conveys to the mortgagee "all equity or right of redemption, homestead, dower, and all other exemptions of the mortgagor."

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14. The mortgaged property is no longer being operated as a restaurant or for any other purpose. The mortgaged property is not being occupied by the mortgagor or anyone claiming an interest in the property under or through the mortgagor. Pursuant to the recitals of the parties to the settlement agreement described in paragraph 13 above, and it being uncontested, the Court finds pursuant to Ill. Rev. Stat. ch. 110, § 15-1603 and former ch. 110, § 12-129 that the mortgaged property has been abandoned.

15. Counterplaintiff Bank shall have possession of the mortgaged property, effective June 16, 1988, pursuant to the settlement agreement described above.

16. A mechanic's lien claim was filed against the property on March 19, 1982 by Carl H. Klehm, Arnold Klehm and Roy Klehm, doing business as The Charles Klehm & Son Nursery in the Office of Sidney R. Olsen, Registrar of Titles of Cook County, Illinois, as document number LR 3,253,458 in the amount of \$8,171.04. This claim has been compromised and satisfied and is therefore hereby dismissed with prejudice.

17. A mechanic's lien claim was filed against the property on January 24, 1983 by M & K Store Fixtures, Inc. in the office of Sidney R. Olsen, Registrar of Titles of Cook County, Illinois, as document number LR 3,291,237 in the amount of \$90,000.00. The amount and priority of said lien is reserved for future determination.

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18. Party Mark Dalen has filed a countercomplaint seeking the return to him of certain property. This countercomplaint has been compromised and satisfied and is therefore hereby dismissed with prejudice.

19. Except as noted in paragraph 17 above, the right, title and interest of all counterdefendants are junior and subordinate to the lien of counterplaintiff Bank's Mortgages and Trust Deed on the property and counterplaintiff Bank has a prior and superior right to have its liens foreclosed and the premises sold in satisfaction thereof.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

A. That unless Counterdefendants or any of them shall within three days from the entry of this decree pay or cause to be paid to counterplaintiff Bank the sum of _____ being the amount found to be due counterplaintiff Bank with interest thereon from the date of this decree, _____, 1988, at the rate of ten percent (10%) per annum and all cost of suit hereafter incurred, then the real estate situated in Cook County, Illinois and described in the Mortgages and Trust Deed foreclosed by this proceeding, to wit:

Lot 1 and Lot 2 in Donald Larson's Resub-
division of part of Lot 7 in the Sub-
division of Joseph A. Barne's Farm in
Section 16, Township 41 North, Range 11,
East of the Third Principal Meridian,
according to Plat thereof registered in the

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Office of the Registrar of Titles of Cook County, Illinois on September 22, 1967, as Document Number LR 2,349,338, in Cook County, Illinois.

shall be sold at public auction to the highest bidder for cash, said sale to be conducted by James O'Grady, Sheriff of Cook County, Illinois; that such sale shall be held in Room 702 of the Richard J. Daley Center, located at the corner of Clark and Randolph Streets in the City of Chicago, County of Cook, State of Illinois, or such other place the court may hereafter designate.

B. That the Sheriff shall give public notice of the time, place and the terms of said sale by previously advertising the same at least once each week for three successive weeks in a secular newspaper of general circulation, printed and published in Cook County, Illinois, the first publication of the notice of sale to be not less than 20 days prior to the date of sale. The Sheriff may at any time and from time-to-time in his discretion adjourn the same upon advising all persons present by proclamation and by giving the same public notice of the time and terms of the adjourned sale as herein set forth. Counterplaintiff Bank or any of the parties to this cause may become the purchaser at said sale.

C. That the Sheriff, upon making the sale, shall report the same and his actions and doings in connection therewith to the Court for its approval and confirmation.

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Upon confirmation of the sale by the Court, the Sheriff shall execute and deliver to the purchaser or purchasers a certificate or certificates of sale as required by law and shall cause executed duplicates thereof to be filed for record in the Office of the Registrar of Titles and in the Office of the Recorder of Deeds of Cook County, Illinois, and out of the proceeds of such sale, the Sheriff shall retain his fees, disbursements and commission and see that all taxable costs are paid to the person or persons entitled thereto and he shall then pay to counterplaintiff Bank or its attorney of record, the amounts due counterplaintiff Bank under this decree, with interest as aforesaid and all taxable cost advanced by counterplaintiff Bank to the extent the proceeds remaining may suffice. If, after payment in full of the sum set forth as aforesaid, there remains any surplus, the Sheriff shall bring such surplus into court and abide by further order of said Court herein. In the event counterplaintiff Bank is the successful bidder at the sale, the Sheriff may accept counterplaintiff's receipt for its distributive share of the proceeds of sale in lieu of cash.

D. That in case the proceeds of sale are not sufficient to pay counterplaintiff Bank's liens in full and there remains a deficiency in the amount due counterplaintiff Bank, counterplaintiff Bank shall be entitled to have the rents, issues and profits of the premises, if any, applied toward the payment of such deficiency in the order hereinabove set forth until the statutory period of redemption.

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expires, regardless of whether or not the premises shall have been redeemed from sale, or until the deficiency shall be paid or satisfied in full, and counterplaintiff Bank is entitled to a lien prior and superior to the rights of all Counterdefendants in and to such rents, issues and profits.

E. That if the premises sold shall not be redeemed within the time and manner provided by law, the Sheriff, upon presentation and production of the certificate of sale by the purchaser or purchasers, his or their heirs, successors or assigns, shall execute to the holder or holders thereof a deed or deeds of conveyance (in duplicate) of the premises described in such certificate, and counterdefendants in this case and each and all of them, and all persons claiming by, through or under them or any of them, shall be forever barred and foreclosed of and from any and all right, title and equity of redemption and claim of any kind in and to the premises, and each and every part and parcel thereof which shall have been sold and which shall not have been redeemed according to law.

F. That upon execution and delivery of the deed or deeds, the grantee or grantees in such deed or deeds, or their heirs, successors or assigns, shall be let into possession of the premises so conveyed, and any of the parties to this cause who may be in possession of the premises of any portion thereof, and any person who since the commencement of this suit has entered into possession of the premises or any portion thereof, upon the production of

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the deed or deeds as aforesaid or a certified copy thereof, shall surrender possession of the premises to the grantee or grantees, his or their heirs, successors or assigns, and in default of so doing, a writ of assistance may issue in accordance with the practice of this Court.

G. That the Court reserves and retains jurisdiction of the subject matter of this case and of all parties hereto for the purpose of: (1) entering a deficiency judgment, if appropriate; (2) determining the amount and priority of the remaining mechanic's lien claim; and (3) entering such other and further orders, not inconsistent with the provisions of this decree, as the court may deem advisable.

H. Leave is granted to withdraw the original Note, Mortgages and Trust Deed and to substitute therefore true and correct copies of said instruments.

I. Judgment is entered in favor of counter-plaintiff Bank on the counterclaim filed against it.

J. The Court finds that there is no just reason for delaying the enforcement of, or an appeal from, this judgment.

Date: _____

JAM8614B-358

JUDGE G. E. THOMAS R. RAKOWSKI
JUN 20 1983
CIRCUIT COURT - 456

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STATE OF ILLINOIS,
COUNTY OF COOK

ss.

I, MORGAN M. FINLEY, Clerk of the Circuit Court of Cook County, in and for the State of Illinois,
and the keeper of the records, files and seal thereof, do hereby certify the above and foregoing to be true, perfect
and complete **COPY OF A CERTAIN JUDGMENT MADE AND ENTERED OF RECORD IN SAID COURT:**

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in a certain cause lately pending in said Court, between

CARL H. KLEHM, ET AL plaintiff/petitioner

and GRECIAN CHALET LTD., ETC., ET AL defendant/respondent.

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed

the seal of said Court, in said County, this 12th
day of July, 1988

Morgan M. Finley Clerk

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