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Name of Assigned Judge	Staff	Sitting Judge or Clerk	Then Assigned Judge
Case Number	89 C 7897	Date	September 20, 1990
Case Title	Fleet Mortgage Corp. V. James D. Smith 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 Attorney, SHAPIRO & KREISMAN

MOTION TO REINSTATE CASE FROM BANKRUPTCY, :

MOTION FOR DEFAULT, JUDGMENT OF FORECLOSURE AND SALE, AND ORDER APPOINTING SPECIAL COMMISSIONER

OCT 4 1990

Filed on

sent for microfilming

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

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

Plaintiff's motion for einstate case from bankruptcy is granted. Rosemary Kopriva and Blane Olmos given leave to file their appearances and Pamela Levin and Martha Tjoseem given leave to withdraw their appearances. Enter order of default. Enter judgment of foreclosure and sale. Enter order appointing Robert Senechalle, Jr. special commissioner.

(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 _____ revert for _____ at _____

(8) Pretrial conference held continued to _____ set for _____ revert for _____ at _____

(9) Trial set for _____ revert for _____ at _____

(10) Jury trial Jury trial Hearing held and continued to _____ at _____

(11) Trial dismissed without with prejudice and without costs by agreement pursuant to _____

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

No motions required. Motions mailed by judge's staff. Notified counsel by telephone. Declaring to mail motions. Mail AG 476 form.	courtroom deputy's initials <i>RD</i>	3 <i>Krus</i>	Number of motions 3	Document # <i>24</i>
		OCT 4 1990	date docketed	
		SEP 21 1990	date filed motion	
		Date/time received in central Clerk's Office <i>MP</i>	mailing depr. month	

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90 SEP 21 1990

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

Fleet Mortgage Corp.)

PLAINTIFF,)

-vs-)

James D. Smith, Cary J. Smith,)
Carol Mosley-Braun Registrar of)
Titles, United States of America)

DEFENDANTS.)

DOCKETED

OCT 1 1990

NO. 89 C 7897
Honorable Judge
Duff

ORDER OF DEFAULT

On motion of ROSEMARY KOPRIVA, Attorney for the Plaintiff, the requisite affidavit having been filed and due notice of the pendency of this suit having been given to the Defendant(s), James D. Smith and Cary J. Smith either by personal service of summons, or by Publication and mailing, which notice in manner and content was in all respects as required by law, and pursuant to Order of court heretofore entered and

Said defendants having failed to plead or otherwise defend pursuant to said Order of Court, and pursuant to said notice.

IT IS ORDERED that by this Court that the Complaint herein be taken as confessed against the said defendants, and each of them.

DATED: SEP 20 1990

ENTERED: Brian Barne

JUDGE

SHAPIRO & KREISMAN
Attorneys at Law
1161 A Lake Cook Road
Deerfield, Illinois 60015
(708) 945-6040

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89-9494

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

Fleet Mortgage Corp.)
)
PLAINTIFF,)
)
-vs-)
)
James D. Smith, Cary J. Smith,)
Carol Masoley-Braun Registrar of)
Titles, United States of America)
)
DEFENDANTS.)

NO. 89 C 7897
DOCKETED
OCT 4 1990

ORDER TO VACATE DISMISSAL ORDER AND TO REINSTATE CASE

THIS MATTER coming on to be heard on motion of the Plaintiff, Fleet Mortgage Corp., by and through its attorneys, Shapiro & Kreisman, for the entry of an order vacating the dismissal order entered on July 5, 1990 and for the entry of an order reinstating this action;

The Court being advised that the Chapter 7 Bankruptcy proceeding filed on May 31, 1990 as case number 90 B 10095 has been discharged.

IT IS HEREBY ORDERED that the order dismissing this action on July 5, 1990 be and is hereby vacated and that this cause be reinstated and Plaintiff is granted leave to proceed with foreclosure.

DATED: SEP 29 1990

ENTERED:

JUDGE

SHAPIRO & KREISMAN
Attorney for Plaintiff
1161 A. Lake Cook Rd.
Deerfield, IL 60015
(708) 945-6040

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89-9494

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

Fleet Mortgage Corp.)

PLAINTIFF,)

-VS-)

James D. Smith, Cary J. Smith,)
Carol Mosley-Braun Registrar of)
Titles, United States of America)

DEFENDANTS.)

OCT 4 1990

NO. 89 C 7897
Honorable Judge
Duff

ORDER APPOINTING SPECIAL COMMISSIONER

IT IS ORDERED THAT *[Signature]* be and
the same is hereby appointed Special Commissioner of this Court
for the purpose of the sale at public venue of the property
commonly known as:

12628 Fairview, Blue Island, IL 60406

SEP 20 1990

DATED: _____

ENTERED: *[Signature]*

JUDGE

SHAPIRO & KREISMAN
Attorney's at Law
1161 A Lake Cook Road
Deerfield, Illinois 60015
(708) 945-6040

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89-9494

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

Fleet Mortgage Corp.)
)
PLAINTIFF,)
)
vs.)
)
James D. Smith, Cary J. Smith,)
Carol Moseley-Braun Registrar of)
Titles, United States of America)
)
DEFENDANTS.)

No. 89 C 7897
Judge Duff



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DC

JUDGMENT OF FORECLOSURE AND SALE

This cause having been duly heard by this Court upon the record herein, the Court FINDS:

1. It has jurisdiction of the parties hereto and the subject matter hereof.

2. That all the material allegations of the Complaint are true and proven, and that by virtue of the mortgage, and the evidences of indebtedness secured thereby alleged in the Complaint, there is due to the Plaintiff, and it has a valid subsisting lien on the property described hereinafter for the following:

(a). Principal, Advances and Accrued Interest by Plaintiff:	\$68,314.91
Costs of Suit:	\$ 1,124.40
Attorneys' Fees:	\$ 575.00
TOTAL:	\$70,014.31

All the foregoing amounts have been accounted for in the Affidavit filed by the Plaintiff herein.

(b). For such advances made in order to protect the lien of the judgment and preserve the real estate, such as, but not limited to: property inspections,, real estate taxes or assessments, property maintenance, and insurance premiums incurred by the Plaintiff and not included in this Judgment is entered and prior to the Commissioner's sale; that any such item expended shall become so much

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additional indebtedness secured by the judgment lien and bear interest from date of the advance at the mortgage rate of interest.

3. (a). The date when the last of the owners of the equity of redemption were served with summons or by publication was January 31, 1990 and the right to reinstate has or will expire on April 31, 1990.

(b). The mortgaged real estate is residential property as defined in Chapter 110, Section 15-1219 Illinois Revised Statutes; that the period of redemption herein shall end (i) seven (7) months from the date the last mortgagor, as described herein, was served by summons or by publication or have otherwise submitted to the jurisdiction of the court or (ii) the date three (3) months from the date of entry of this Judgment, whichever is later.

(c). The rights of redemption shall expire on December 20, 1990, unless shortened by further Order of Court.

4. That under the provisions of said mortgage, the costs of foreclosure and reasonable attorneys fees are an additional indebtedness for which the Plaintiff should be reimbursed and that such expenses and reasonable attorneys fees are hereby allowed to the Plaintiff.

5. That the Mortgage described in the Complaint and hereby foreclosed appears of record in the Office of the Cook County Recorder of Deeds and the property herein referred to and directed to be sold is described as follows:

Lot 7 in Block 2 in the Resubdivision of Lots 1 to 27 both inclusive, in Block 3 and Lots 1 to 20 both inclusive, in Block 4 in Harmon and Young's Subdivision in the Southwest Quarter of the Southeast Quarter of Section 25, Township 37 North, Range 13, East of the Third Principal Meridian, also the vacated alleys lying South of and adjoining Lots 1 to 7 both inclusive, and the alley lying North of and adjoining Lots 21 to 27 both inclusive, in Block 3 and the alley lying South of and adjoining Lots 1 to 7 both inclusive in Block 4, in Cook County, Illinois. Commonly known as 12628 Fairview, Blue Island, IL 60406.

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6. That the rights and interests of all Defendants to this cause in and to the property hereinbefore described, are inferior to the lien of Plaintiff heretofore mentioned.

7. That true and correct copies of the original Note and

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original Mortgage are attached to the Complaint.

IT IS THEREFORE ORDERED AND ADJUDGED BY THIS COURT as follows:

1. **SALE OF THE PREMISES:** The premises hereinabove described, covered by the security foreclosed in this action, shall be sold at public venue by a Special Commissioner of this Court. The attorneys for the Plaintiff shall give public notice of the time, place and terms of sale. The notice of sale shall be published at least three (3) consecutive calendar weeks (Sunday through Saturday), once in each week, the first such notice to be published not more than thirty-five (35) days prior to the sale, the last such notice to be published not less than seven (7) days prior to the sale, by:

- (a). advertisements 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;
- (b). separate advertisements in the section of such newspaper, which may be the same newspaper, in which the 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.
- (c). Notice of public sale shall be given by attorneys for the Plaintiff to all parties in the action who have appeared and have not theretofore 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 of complaint, not more than 28 days nor less than seven (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 the court entering the judgment, together with a certificate of counsel or other proof that notice has been served.

The Plaintiff or any of the parties to this cause, may become the purchasers at such sale. The Commissioner may adjourn or continue the sale subject to the Notice and advertisement pursuant to the requirements of Chapter 110, Section 15-1507(4)(c) of the Illinois Revised Statutes as amended (1987).

2. **TERMS OF SALE:** The Commissioner shall offer for sale the real estate described in Paragraph Five (5) above, with all improvements, fixtures and appurtenances thereto; or so much of

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said real estate which may be divisible and sold separately without material injury to the parties in interest. The real estate shall be sold at public auction to the highest bidder for cash; requiring payment not less than ten percent (10%) at the time of sale and the balance within twenty-four (24) hours plus interest at the statutory Judgment rate on any unpaid portion of the sale price from the date of sale to the date of payment. All payments of the amount bid shall be in cash or certified funds payable to the Special Commissioner. In the event the bidder fails to comply with the terms of the purchase as required, then upon demand by the Plaintiff in a notice served on the Commissioner and the bidder, the funds submitted shall be forfeited to Plaintiff or Plaintiff has the option to have the property sold to the next highest bidder. In the event there is a third party bidder other than Plaintiff, the Commissioner shall obtain the name, address (other than a post office box), and telephone number of that bidder. Notice by regular mail to the address given by the bidder and to the Commissioner shall be deemed sufficient notification by the Plaintiff to exercise its option to forfeit the funds. The subject property is offered for sale without any representation as to quality or quantity of title or recourse to Plaintiff.

3. PROCEEDS OF SALE: That out of the proceeds of such sale, the Commissioner's distribution shall be made in the following order of priority:

- (a). The Commissioner shall be paid his/her reasonable fees and costs;
- (b). The reasonable expenses of sale;
- (c). 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, receiver's and 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 Section 15-1505 and other legal expenses incurred by the mortgagee;
- (d). Out of the remainder of such proceeds, the amount found due to the Plaintiff in the Judgment shall be paid to the Plaintiff.
- (e). If Plaintiff is the successful bidder at said sale, the amount due the Plaintiff, plus all costs, advances and fees hereunder with interest incurred between entry of Judgment and confirmation of sale shall be taken as a credit on its bid.
- (f). If the remainder of the proceeds shall not be sufficient

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to pay the above described amounts and interest, the Commissioner shall then specify the amount of the deficiency in his/her Report of Sale. The Plaintiff shall be entitled to a judgment in personam for the amount of such deficiency against the following named persons, if any, James D. Smith and Cary J. Smith and a Memorandum of Judgment shall issue to Plaintiffs with the same lien priority as to the underlying mortgage herein foreclosed, without any rights of Homestead. If such remainder shall be more than sufficient to pay such amounts and interest, the Clerk of the Court or other party designated by the Court shall hold the surplus subject to the further order of Court.

4. CERTIFICATE OF SALE/RECEIPT: Upon the sale of mortgaged real estate, the person conducting the sale shall promptly give a receipt of sale for funds tendered. The Commissioner, after entry of an order approving sale and upon the request of the successful bidder shall execute and deliver a certificate of sale to the successful bidder and record a duplicate of said certificate in accordance with Sections 12-119 and 12-121 of the Code of Civil Procedure. The certificate shall be freely assignable by endorsement thereon.

5. REPORT OF SALE AND CONFIRMATION OF SALE:

(a). Report of Sale - The person conducting the sale shall promptly make a report of sale to the Court.

(b). Hearing - Upon motion and notice in accordance with court rules applicable to motions generally, the Court shall conduct a hearing to confirm the sale. The Court shall then enter an order confirming the sale, which order shall include a judgment for possession which judgment shall become effective thirty (30) days after entry. The confirmation Order may also:

(1). approve the mortgagee's fees, costs and additional advances arising between the entry of the judgment of foreclosure and the confirmation hearing.

(2). provide for a personal judgment against any party for a deficiency, if applicable; and

(3). determine the priority of the judgments of parties who deferred proving the priority pursuant to subsection (i) of Section 15-1506, but the Court shall not defer confirming the sale pending the determination of such priority.

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6. SPECIAL REDEMPTION: That upon judicial sale of "residential" real estate to the mortgagee who is a party to this foreclosure or its nominee for a sale price less than the amount required to redeem as specified in Chapter 110, Section 15-1603(d) of the Code of Civil Procedure, an owner of redemption as specified in Chapter 110, Section 15-1603(a) of the Illinois Code of Civil Procedure shall have a special right to redeem for a period ending 30 days after the date the sale is confirmed. Redemption shall be made by paying the amount required by and in conformity with the procedures specified in Chapter 110, Section 15-1604 Illinois Code of Civil Procedure. Property so redeemed shall be subject to a lien for any deficiency remaining with the same lien priority as the underlying mortgage herein foreclosed, without any rights of Homestead.

7. COMMISSIONER'S DEED: That upon confirmation of the sale, payment of the purchase price and any other amounts required to be paid by the purchaser at sale, and after the expiration of all the mortgagor's reinstatement and redemption rights and rights to possession, the party conducting said sale shall execute and deliver to the holder of the certificate of sale or if no certificate has been issued, then to the holder of the receipt of sale or the assignee thereof, a deed sufficient to convey title; said conveyance shall be an entire bar to all claims of the parties to the foreclosure and all persons claiming thereunder; that thereupon, the grantee in such deed, or legal representative or assign, be let into possession of the premises.

8. That the parties hereto who shall be in possession of said premises, or any part thereof, including leaseholders, or any person who may have come into such possession under them or any of them, since the inception of the mortgage or commencement of this suit, shall upon presentment of said Commissioner's Deed of Conveyance, surrender possession of said premises to said grantee, his representative or assigns, and in default of so doing, an Order of Possession shall issue.

9. 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 appointing or continuing a Receiver herein at any time during the period of redemption.

ENTER: 

SHAPIRO & KREISMAN
Attorneys for Plaintiff
1161 Lake Cook Road
Deerfield, Illinois 60015
(708) 945-6040

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

DOCKETED

Fleet Mortgage Corp.

PLAINTIFF,

OCT 4 1990

-vs-

NO.89 C 7897

James D. Smith, Cary J. Smith,
Carol Moseley-Braun Registrar of
Titles, United States of America)

Judge Duff

DEFENDANTS.

ORDER

THIS MATTER coming before the Court on Motion of the Plaintiff, Fleet Mortgage Corp..

IT IS HEREBY ORDERED that ROSEMARY KOPRIVA and BLANE OLMOS are granted leave to file their appearances on behalf of the Plaintiff.

The individual appearances of PAMELA H. LEVIN and MARTHA E. TJOSEEM are withdrawn.

DATED: SEP 20 1990

ENTERED: *Brian Barrett*
JUDGE

SHAPIRO & KREISMAN
Attorney for Plaintiff
1161 A. Lake Cook Rd.
Deerfield, IL 60015
(708) 945-6040

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CAROL MOSELEY BRAUN
REGISTRAR OF TITLES

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SHAPIRO & KREISMAN
100 N. LaSALLE ST.
CHICAGO, IL 60602

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