

IN THE CIRCUIT COURT IN AND FOR
BAY COUNTY, STATE OF FLORIDA
CIVIL DIVISION

CASE NO. 08-924-CA

WACHOVIA BANK, National Association,

Plaintiff,

vs.

WATERPOINTE DEVELOPMENT, LLC,
JOSEPH CANADAY, JR. a/k/a JOSEPH H.
CANADAY, JR., EDWARD CANADAY
a/k/a EDWARD A. CANADAY, MICHAEL
KNIGHT, and CLINT GUTHRIE,

Defendants.

POSTED SC

**DEFAULT FINAL JUDGMENT AS TO COUNT I (ACTION ON
BREACH OF NOTE) AND COUNT VI (FORECLOSURE)**

THIS CAUSE came on to be heard on February 17, 2010, upon the Plaintiff's Motion for Default Final Judgment as to Count I (Action on Breach of Note) and Count VI (Foreclosure) [the "Motion for Final Judgment"]. The Court reviewed the pleadings herein, including the Affidavits in Support of the Motion for Final Judgment. Based upon the foregoing, the Court finds that:

1. The Court has jurisdiction of this cause and the parties hereto.
2. The Plaintiff's address is Wachovia Bank, c/o Owen Bradley, CCIM Relationship Manager, 420 20th Street North, Suite 800, Birmingham, Alabama 35203.
3. The last known address for Defendant, WaterPointe Development, LLC, is c/o Derrick Bennett, Its Registered Agent, 112 East 3rd Court, Panama City, Florida 32413.

4. Plaintiff has complied with all elements of law and guidelines in procuring a judgment of foreclosure and has filed a Mortgage Foreclosure Hearing Memorandum of Status in compliance with Administrative Order 2009-00-06.

5. The Defendants, Joseph Canady, Jr. a/k/a Joseph H. Canady, Edward Canaday a/k/a Edward A. Canaday, Michael Knight, and Clint Cuthrie, were dropped as party Defendants.

6. The remaining Defendant, WaterPointe Development, LLC, did not respond to Plaintiff's Complaint and on April 3, 2008, a Clerk's Default was entered against the said Defendant.

7. Based upon the Motion for Final Judgment and the Affidavits filed in support thereof, the following amounts are due and owed to Plaintiff:

Remaining principal balance	\$9,540,000.00
Accrued but unpaid interest as of 12/4/09	1,082,073.77
Interest, 76 days at \$598.46 per diem	45,482.96
Late Charges	2,909.70
Cost of Receivership and Appraisals	116,865.98
Attorneys' Fees	19,763.50
Taxable Court Costs	<u>1,502.95</u>
Total	\$10,808,598.86

8. The total sum in Paragraph 7 above shall bear interest from this date forward at the prevailing statutory interest rate of six percent (6%) per annum.

9. Plaintiff holds a lien for the total sum specified in Paragraph 7 herein. The lien of the Plaintiff is superior in dignity to any right, title, interest, or claim of the

Defendants and all persons, corporations, or other entities claiming by, through, or under the Defendants, or any of them and the Property will be sold free and clear of all claims of the Defendants, with the exception of any assessments that are superior pursuant to Sections 718.116 and 720.3085, Florida Statutes.

10. The Plaintiff's lien encumbers the real property located in Bay County, Florida, which property is described as follows:

A parcel of land lying and being in the portion of the East one-half of Section 13, Township 3 South, Range 17 West, Bay County, Florida; being more particularly described as follows:

For a POINT OF BEGINNING, commence at the Northwest corner of Lot 7, Block 4, SUNTIME BEACH, a subdivision recorded in Plat Book 8, page 43 in the office of the Clerk of the Circuit Court of Bay County, Florida; thence South 88 degrees 17 minutes 48 seconds East, along the North line of said Lot 7 and its extension, 445.00 feet to the West line of HORIZON SOUTH, A CONDOMINIUM recorded in Official Records Book 760, page 545 in the office of the Clerk of the Circuit Court of Bay County, Florida; thence South 01 degrees 42 minutes 12 seconds West, along the West line of said HORIZON SOUTH, A CONDOMINIUM, 903.97 feet; thence continuing along the West line of said HORIZON SOUTH, A CONDOMINIUM, South 30 degrees 23 minutes 02 seconds West, 200.09 feet to the Northeasterly right-of-way line of U.S. Highway No. 98A (100.00 foot wide right-of-way); thence North 59 degrees 36 minutes 58 seconds West, 446.60 feet to the East right-of-way line of line of Cobb Road (70.00 foot wide right-of-way); thence North 14 degrees 14 minutes 12 seconds East, along the East right-of-way line of said Cobb Road, 53.94 feet to a point of curvature; thence Northeasterly along the East right-of-way line of said Cobb Road, on the arc of a curve concave to the West, 287.29 feet to a point of tangency, said curve having a radius of 1308.25 feet, and a chord length of 287.21 feet, bearing North 07 degrees 56 minutes 05 seconds East; thence continuing along the East right-of-way-line of said Cobb Road, North 01 degrees 42 minutes 12 seconds East, 107.00 feet to the South right-of-way line of Sun Street (60.00 foot wide right-of-way); thence South 88 degrees 17

minutes 48 seconds East, along the South right-of-way line of said Sun Street, 125.00 feet to the East line said SUNTIME BEACH; thence North 01 degrees 42 minutes 12 seconds East, along the East line of said SUNTIME BEACH, 60.00 feet to the North right-of-way line of said Sun Street; thence North 88 degrees 17 minutes 48 seconds West, along the North right-of-way line of said Sun Street, 125.00 feet to the Southwest corner of Lot 12, Block 4 of said SUNTIME BEACH; thence North 01 degrees 42 minutes 12 seconds East, along the East right-of-way line of said Cobb Road, 360.00 feet to the POINT OF BEGINNING. Said parcel containing 10.021 acres more or less.

(the "Property")

11. If the total sum with interest at the rate described in Paragraph 7 and all costs accrued subsequent to this Judgment are not paid, the Clerk of Circuit Court shall sell the subject Property at public sale on 17 day of March, 2010, at 11:00 a.m. to the highest bidder for cash, except as prescribed below, at the North Front Door of the Bay County Courthouse, 300 East 4th Street, Panama City, Florida 32401, after having first given notice as required by Section 45.031, Florida Statutes.

12. A sale should not be held in the absence of the Plaintiff's attorney or other representative. Plaintiff or its attorney may also cancel or postpone the sale by notifying the Clerk of the Court of such cancellation or postponement via a fax sent to the Clerk prior to the sale being conducted.

13. Plaintiff shall advance all subsequent required costs of this action and shall be reimbursed for them by the Clerk, if Plaintiff is not the purchaser of the Property for sale. If Plaintiff is the purchaser, the Clerk shall credit Plaintiff's bid with the total sum with interest and costs accruing subsequent to this Judgment, or such part of it, as is necessary to pay the bid in full. If a third party bidder is the purchaser, the third party

bidder must pay the documentary stamps attached to the Certificate of Title in addition to the bid.

14. If the Plaintiff incurs additional expenses subsequent to the entry of this Judgment but prior to the sale date specified in Paragraph 11, Plaintiff may, by written motion served on all parties, seek to amend this Judgment to include said additional expenses.

15. On the filing of the Certificate of Title, the Clerk shall distribute the proceeds of the sale, so far as they are sufficient, by paying: first, all of the Plaintiff's costs; second, documentary stamps affixed to the Certificate, unless the property is purchased by a third party bidder; third, Plaintiff's attorneys' fees; fourth, the total sum due to the Plaintiff, less the items paid, plus interest at the rate prescribed in Paragraph 8 from this date to the date of the sale; and by retaining any remaining amount pending further Order of this Court.

16. On filing of the Certificate of Title, Defendants and all persons claiming under or against Defendants since the filing of the Notice of Lis Pendens shall be foreclosed of all estate or claim in the Property and the purchaser at sale shall be let into possession of the Property. On filing of the Certificate of Sale, Defendant's right of redemption as provided by Section 45.0315, Florida Statutes, shall be terminated.

17. **IMPORTANT INFORMATION PROVIDED** pursuant to Section 45.031, Florida Statutes:

IF THIS PROPERTY IS SOLD AT PUBLIC AUCTION, THERE MAY BE ADDITIONAL MONEY FROM THE SALE AFTER PAYMENT OF PERSONS WHO ARE ENTITLED TO BE PAID FROM THE SALE PROCEEDS PURSUANT TO THIS FINAL JUDGMENT.

IF YOU ARE A SUBORDINATE LIEN HOLDER CLAIMING A RIGHT TO FUNDS REMAINING AFTER THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN 60 DAYS AFTER THE SALE. IF YOU FAIL TO FILE A CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS.

18. The Plaintiff may assign this Judgment and credit bid by the filing of an assignment without further Order of the Court.

19. The Court retains jurisdiction of this action to consider further orders that are proper, including without limitation, orders authorizing writs of possession and an award of additional attorney's fees, and to enter deficiency judgments against the Defendant, if not been discharged in bankruptcy.

DONE AND ORDERED, in Chambers at Panama City, Bay County, Florida, on this 17 day of February, 2010.



THE HONORABLE MICHAEL C. OVERSTREET
CIRCUIT JUDGE

Conformed copy to:

Derrick Bennett, Registered Agent WaterPointe Development, LLC 112 East 3 rd Court Panama City, FL 32413	David W. Stephensen, Esquire Bradley Arant Boult Cummings LLP One Federal Place 1819 Fifth Avenue North Birmingham, Alabama 35203-2104 Attorney for Jeffrey M. Granger, Receiver
L. Geoffrey Young, Esquire Christy S. Berks, Esquire Adams and Reese LLP 150 Second Avenue North, 17 th Floor St. Petersburg, FL 33701 Attorneys for Plaintiff	