

IN THE CIRCUIT COURT, FOURTEENTH  
JUDICIAL CIRCUIT, IN AND FOR BAY  
COUNTY, FLORIDA

FILED

2014 JUN -3 A 10:26

CASE NO.: 14-310 CA

BILL KINSAUL  
CLERK OF COURT  
BAY COUNTY, FLORIDA

**AMERIS BANK**, a Georgia banking corporation,  
as successor by merger with Prosperity Bank,

Plaintiff,

vs.

**SHRIMPBOAT RESTAURANT, INC.**, a Florida corporation; **ST. ANDREWS HARBOR VILLAGE, LLC**, a Florida limited liability company; **SMITHS' INCORPORATED**, a Florida corporation, also known as **SMITHS', INC.**, a Florida corporation; **POMPANO VENTURES, INC.**, a Florida corporation; **WILLIAM LOREN SMITH**, an individual; **ANITA S. SMITH**, an individual; **A&J HOLDINGS, LLC**, a Florida limited liability company, **AXIOM DEVELOPMENT/ST. ANDREWS HARBOR VILLAGE, L.L.C.**, a now inactive Florida limited liability company; **AXIOM CONSTRUCTION GROUP, L.L.C.**, a now inactive Florida limited liability company, and **OMNICON, L.L.C.**, a now inactive Florida limited liability company.

Defendants.

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**FINAL SUMMARY JUDGMENT OF FORECLOSURE OF REAL PROPERTY**

This Case is before the Court on the Motion of Plaintiff Ameris Bank ("Plaintiff" or "Ameris"), a Georgia banking corporation, as successor by merger with Prosperity Bank, for Final Summary Judgment of Foreclosure of Real Property against Defendants Shrimpboat Restaurant, Inc. ("Shrimpboat"), St. Andrews Harbor Village, LLC ("Harbor"), Smiths' Incorporated ("SI"), William Loren Smith ("Mr. Smith"), A&J Holdings, LLC ("A&J"), Axiom Development/St. Andrews Harbor Village, L.L.C. ("ADSAHV"), Axiom Construction Group,

L.L.C. ("ACG"), and Omnicon, L.L.C. ("Omnicon") (all collectively, the "Defendants"). The Court, having considered the pleadings filed in this matter, and being otherwise fully advised in the premises, finds as follows:

1. Defendants have all been duly and regularly served, and the Court has jurisdiction over the parties to this action and the subject matter herein.

2. Plaintiff Ameris is a Georgia banking corporation with its principal place of business located in Colquitt County, Georgia at 225 South Main Street, Moultrie, Georgia 31768.

3. On or about December 23, 2013, Prosperity Bank ("Prosperity"), the original lender of the loan at issue in this action, merged with and into Ameris.

4. Defendant Shrimboat is a Florida corporation with a principal place of business located in Bay County, Florida at 1201 Beck Avenue, Panama City, Florida 32401.

5. Defendant Harbor is a Florida limited liability company with a principal place of business located in Bay County, Florida at 1201 Beck Avenue, Panama City, Florida 32401.

6. Defendant SI is a Florida corporation with a principal place of business located in Bay County, Florida at 1201 Beck Avenue, Panama City, Florida 32401

7. Defendant Mr. Smith is an individual residing in Bay County, Florida at 3411 W 15th Street, Panama City, Florida 32401.

8. Defendant A&J is a Florida limited liability company with a principal place of business located in Alpharetta, Georgia.

9. Defendant ADSAHV is a now inactive Florida limited liability company with a principal place of business located in Okaloosa County, Florida.

10. Defendant ACG is a now inactive Florida limited liability company with a principal place of business located in Okaloosa County, Florida.

11. Defendant Omnicon is a now inactive Florida limited liability company with a principal place of business located in Okaloosa County, Florida.

12. Venue is proper in Bay County, Florida as the real property at issue in this matter is located in Bay County, Florida, the causes of action alleged herein arose in Bay County, Florida, and at least one of the Defendants reside in Bay County, Florida.

13. On or about December 5, 2007, Shrimpboat executed and delivered a Construction Loan Agreement (the "Original Loan Agreement") to Prosperity relating to a loan in the original principal amount of \$4,800,000.00. On or about July 18, 2008, Shrimpboat executed and delivered a Construction Loan Agreement (the "Renewed Loan Agreement"), which renewed, supplemented and modified the Original Loan Agreement and increased the principal amount of the loan to \$5,358,599.00. On or about January 5, 2011, Shrimpboat, among other parties, executed and delivered a Loan Agreement (the "Second Renewed Loan Agreement"), which renewed, supplemented and modified the Original Loan Agreement, as renewed by the Renewed Loan Agreement, and increased the principal amount of the loan to \$5,687,100.00. The Original Loan Agreement, as renewed by the Renewed Loan Agreement and the Second Renewed Loan Agreement, shall hereinafter be referred to as the "Loan Agreement."

14. On or about January 5, 2011, Shrimpboat executed and delivered to Prosperity a Promissory Note in the original principal amount of \$5,687,100.00 (the "Note"). The Note renewed prior promissory notes executed by Shrimpboat and delivered to Prosperity on or about December 5, 2007, March 26, 2008 and July 18, 2008 respectively (collectively, the "Prior Notes"). The Prior Notes, as renewed by the Note, shall hereinafter be referred to as the "Note."

15. On or about December 5, 2007, Shrimpboat, Harbor, and SI (collectively, the "Original Mortgagors") executed and delivered to Prosperity that certain Mortgage and Security

Agreement (the "Original Mortgage"), which is recorded at Official Records Book 3001, Page 1251 of the Public Records of Bay County, Florida. The Mortgage was subsequently modified by (i) that certain Modification of Mortgage Agreement recorded at Official Records Book 3070, Page 1013 of the Public Records of Bay County, Florida and (ii) that certain Mortgage Modification Agreement, Spreader Agreement, Future Advance Agreement and Hypothecation Agreement recorded at Official Records Book 3301, Page 1088 of the Public Records of Bay County, Florida, which was executed by the Original Mortgagors and Mr. Smith (collectively, the "Modifications," and Original Mortgagors and Mr. Smith collectively, the "Mortgagors"). The Original Mortgage, as modified by the Modifications, shall hereinafter be referred to as the "Mortgage."

16. The Mortgage secures payment of the Note and mortgages certain real property owned by certain of the Mortgagors, which is located in Bay County, Florida and more particularly described in the Mortgage and on the attached Schedule A (the "Real Property"). The Real Property includes a restaurant commonly referred to as "The Shrimp Boat Restaurant," a yacht basin that contains 16 boat slips, a vacant bay front parcel located at the southwest corner of Beck Avenue and 13th Street, and a commercial building located at 2902 12th Street.

17. The Mortgage also grants Ameris a security interest in, among other things, all personal property of the Mortgagors (the "Personal Property") and all "rents, profits, issues, and revenues" relating to or arising from the Real Property (the "Rents").

18. Ameris perfected its interest in certain of the personal property (the "Shrimpboat Personal Property") more particularly described in that certain UCC-1 Financing Statement recorded in the Florida Secured Transaction Registry as File Number 200807391563 and UCC-3

Financing Statement recorded in the Florida Secured Transaction Registry as File Number 201207767210 (collectively, the "Shrimpboat UCCs").

19. Ameris perfected its interest in certain of the personal property (the "Smith Personal Property") more particularly described in that certain UCC-1 Financing Statement recorded in the Florida Secured Transaction Registry as File Number 201104078692 (the "Smith UCC").

20. Ameris is the owner and holder of the Loan Agreement, Note and Mortgage, and any other documents associated with or relating to the loan at issue in this matter (collectively, the "Loan Documents"), by virtue of Prosperity's merger with and into Ameris.

21. As of June 3, 2014, <sup>Shrimpboat</sup> ~~the Mortgage~~, jointly and severally, owe Ameris the following amounts under the Loan Documents:

|                        |                      |
|------------------------|----------------------|
| Principal              | \$5,668,476.51       |
| Interest               | \$ 531,429.36        |
| Late Fees              | \$ 63,672.84         |
| <u>Paid 2011 Taxes</u> | <u>\$ 184,802.18</u> |
| Total                  | \$6,448,380.89       |

22. The full amounts due under the Loan Documents are immediately due and payable by <sup>Shrimpboat</sup> ~~the Mortgage~~, to Ameris, and the Amended Complaint alleges a cause of action to foreclose.

23. Ameris possesses a fully perfected security interest in the Real Property by virtue of the Mortgage. Ameris' interests are superior to any other interest claimed by any party, including the Defendants.

24. Ameris has performed all conditions precedent to bringing this action, or any such conditions precedent have been waived by the Defendants.

25. Ameris has employed the law firm of Akerman LLP to represent its interests herein and has become obligated to pay its attorneys a reasonable fee for their services.

In view of the above, as to Defendants, Ameris is entitled to a final judgment of foreclosure in its favor as a matter of law; accordingly it is hereby **ORDERED AND ADJUDGED** that:

**FORECLOSURE AS TO REAL PROPERTY**

A. Final Judgment of Foreclosure (the "Judgment") is hereby entered against Defendants Shrimpboat Restaurant, Inc., St. Andrews Harbor Village, LLC, Smiths' Incorporated a/k/a Smiths', Inc., and William Loren Smith in favor of Ameris and, as of June 3, 2014, Ameris is due the total sum of \$6,448,380.89. The amount due Ameris under this Judgment shall bear interest at the prevailing statutory interest rate of 4.75% per year from the date of this Judgment through July 1, 2014, for which let execution issue. Thereafter, on the first day of each quarter until this Judgment is paid, the interest rate will adjust in accordance with Section 55.03, Florida Statutes.

B. Ameris holds a valid lien against the Real Property pursuant to the Mortgage and Security Agreement, dated December 5, 2007, recorded in Official Records Book 3001, Page 1251 of the current public records of Bay County, Florida and mortgages real property located in Bay County, Florida; as modified by (i) Modification of Mortgage Agreement dated July 18, 2008, recorded in Official Records Book 30700, Page 1013, and (ii) Mortgage Modification Agreement, Spreader Agreement, Future Advance Agreement and Hypothecation Agreement dated January 5, 2011 recorded in Official Records Book 3301, Page 1088, all in the Public Records of Bay County, Florida.

C. The lien of Ameris' Mortgage is superior to any party claiming an interest in the

Real Property through an instrument recorded subsequent to the filing of the Notice of Lis Pendens. The Real Property shall be sold free and clear of all claims of Defendants and any parties claiming by or through them or since the filing of the Notice of Lis Pendens.

D. If the total sum specified in paragraph A with regard to the Loan Documents, with interest at the rate prescribed by law and all costs of this action accruing subsequent to this Judgment are not paid within the time required by law, the clerk of this court shall sell the property at public sale on July 18<sup>th</sup>, 2014 at 11:00 AM to the highest bidder for cash, except as prescribed in paragraphs E and F, in accordance with Section 45.031, Florida Statutes via Bay County Clerk's online foreclosure sale website, [www.bay.realforeclose.com](http://www.bay.realforeclose.com).

E. Ameris or its assignee shall have the right to assign this Judgment and the right to credit bid at the sale and apply against any bid made the amount awarded to Plaintiff in this Final Judgment of Foreclosure, without further Order of this Court. In the event there is such an assignment, Ameris or its assignee shall file a Notice of Assignment of Foreclosure Judgment with the Court that identifies the assignee, and the Clerk of Court shall recognize the assignee as the owner of this Judgment with a right to credit bid the amount awarded herein, without further order of this Court. Ameris all shall have the right to assign its successful bid at the foreclosure sale. In the event there is such an assignment, Plaintiff shall file a Notice of Assignment of Bid with the Court that identifies the assignee, and the Clerk of Court shall recognize the assignee as the owner of the successful bid and the party to be named in the Certificate of Title to be issued by the Clerk of the Court, without further order of this Court.

#### **PROVISIONS AS TO THE SALE**

F. Any purchaser other than Ameris of the Mortgage shall pay all service charges assessed by the Clerk of the Circuit Court as to that particular sale pursuant to Section 28.24,

Florida Statutes together with proper documentary stamps to be affixed to the Certificate of Title.

G. Ameris shall advance all subsequent costs of this action and shall be reimbursed for them by the Clerk if Ameris is not the purchaser of the Real Property at any particular sale mentioned above. If Ameris is the purchaser of any particular sale, the Clerk shall credit Ameris' bid as to that particular sale with the total sum specified in paragraph A above, as applicable, with interest and costs accruing subsequent to this Judgment or such part as may be necessary to pay fully the bid of Ameris.

H. IF ANY OF THESE PROPERTIES ARE SOLD AT PUBLIC AUCTION, THERE MAY BE ADDITIONAL MONEY FROM EACH SALE AFTER PAYMENT OF PERSONS WHO ARE ENTITLED TO BE PAID FROM THE PARTICULAR SALE PROCEEDS PURSUANT TO THIS FINAL JUDGMENT. IF YOU ARE A SUBORDINATE LIENHOLDER AS TO ANY OF THESE PROPERTIES, OTHER THAN THE UNITED STATES OF AMERICA, CLAIMING A RIGHT TO FUNDS REMAINING AFTER THE SALE OF ANY OF THESE PROPERTIES, 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.

I. Upon filing the Certificate of Title as to each property, the Clerk shall distribute the proceeds of each sale, as far as they are sufficient, in the following order:

- a. All of Ameris' costs (unless Ameris is the purchaser) as to that particular sale;
- b. The total sum due Ameris as to that particular sale plus 4.75% per annum interest from the date of this Judgment to the date of the sale; and
- c. Any remaining sums, if any, to be retained pending further order of the Court.

J. Upon filing of the Certificate of Title as to each property, Defendants Shrimboat,

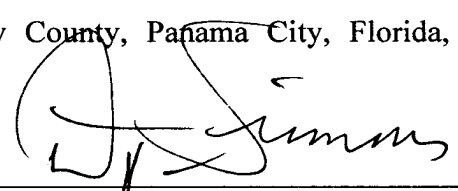


Inc., St. Andrews Harbor Village, LLC, Smiths' Incorporated a/k/a Smiths', Inc., William Loren Smith, A&J Holdings, LLC, Axiom Development/St. Andrews Harbor Village, L.L.C., Axiom Construction Group, L.L.C., and Omnicon, L.L.C, and all persons claiming by, through, or under Defendants Shrimboat, Inc., St. Andrews Harbor Village, LLC, Smiths' Incorporated a/k/a Smiths', Inc., William Loren Smith, A&J Holdings, LLC, Axiom Development/St. Andrews Harbor Village, L.L.C., Axiom Construction Group, L.L.C., and Omnicon, L.L.C, and all other persons claiming under or against Defendants Shrimboat, Inc., St. Andrews Harbor Village, LLC, Smiths' Incorporated a/k/a Smiths', Inc., and William Loren Smith, and all persons claiming by, through, or under Defendants Shrimboat, Inc., St. Andrews Harbor Village, LLC, Smiths' Incorporated a/k/a Smiths', Inc., William Loren Smith, A&J Holdings, LLC, Axiom Development/St. Andrews Harbor Village, L.L.C., Axiom Construction Group, L.L.C., and Omnicon, L.L.C, are foreclosed of all estate or claim in the particular Real Property, and the purchaser at the sale shall be let into possession of the particular Real Property.

K. The Court retains jurisdiction of this action to grant such other and further relief as it deems just and proper, including, without limitation, issuing writs of possession, a deficiency judgment, a judgment of reforeclosure, <sup>judgments on the personal guarantees</sup> and the award of ~~additional~~ fees or costs to Ameris, ~~should the sale of the Real Property be delayed by reason of further proceedings herein,~~ <sup>CP6</sup> or by reason of a stay under the provisions of the Bankruptcy Code, Title 11, United States Code.

**DONE AND ORDERED** in Chambers at Bay County, Panama City, Florida, on


June 3<sup>rd</sup>, 2014.

  
Circuit Judge

Copies to:


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c/o its Registered Agent, William A. Bond

McDonald Fleming Moorhead

25 West Government Street

Pensacola, FL 32502

Axiom Construction Group, L.L.C.

Axiom Development/St. Andrews Harbor Village, L.L.C.

Omnicon, L.L.C.

c/o its Registered Agent, Gary B. Leuchtman

Law Office of Gary B. Leuchtman, PLLC

921 North Palafox Street

Pensacola, FL 32501

## Schedule A

### St. Andrews Harbor Village, LLC and Smith's Incorporated

**Parcel A:**

Lots 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15, Block 18, Plat of City Lots, situated in the Northwest Quarter of Section 1, Township 4 South, Range 15 West, according to the Plat of record in Plat Book 6, Page 25, in the Public Records of Bay County, Florida. LESS AND EXCEPT the East 8 feet of said Lots 4, 5, 6, 7, 8, and 9.

**Together with:**

Beginning at the Southwest corner of Lot 10, Block 18, Plat of City Lots, situated in the Northwest Quarter of Section 1, Township 4 South, Range 15 West, according to the plat recorded in Plat Book 6, Page 25 in the public records of Bay County, Florida, said point also being on the North right of way line of 12th Street (Auburn Avenue per plat); thence North 89 degrees 59 minutes 22 seconds West, along said North right of way line, 69.34 feet; thence North 00 degrees 00 minutes 38 seconds East 36.37 feet; thence North 45 degrees 27 minutes 42 seconds East 10.94 feet; thence South 89 degrees 59 minutes 49 seconds East 53.40 feet; thence North 00 degrees 00 minutes 11 seconds East 7.64 feet; thence South 89 degrees 59 minutes 49 seconds East 8.11 feet to the West line of said Lot 10; thence South 00 degrees 01 minutes 04 seconds East, along said West line, 51.70 feet to the Point of Beginning.

### St. Andrews Harbor Village, LLC

**Parcel B:**

Lots 8, 9, 10, and 11, Block 17, Plat of City Lots, situated in the Northwest Quarter of Section 1, Township 4 South, Range 15 West, according to the Plat recorded in Plat Book 6, Page 25, in the Public Records of Bay County, Florida, lying South of Lake Ware LESS AND EXCEPT the East 62 feet of said Lots 8 and 9, and LESS AND EXCEPT the West 8 feet of said Lots 10 and 11.

Parcel Identification Number: 29990-000-000; 29991-000-000; 29992-000-000; 29996-000-000; 29997-000-000; 29997-010-000

**Parcel C:**

A portion of Block 19, Plat of City Lots, situated in the Northwest Quarter of Section 1, Township 4 South, Range 15 West, according to the Plat of record in Plat Book 6, Page 25, in the Public Records of Bay County, Florida, being more particularly described as follows: Begin at the Northwest corner of Lot 18, Block 18, Plat of City Lots, situated in the Northwest Quarter of Section 1, Township 4 South, Range 15 West, according to the Plat of record in Plat Book 6, Page 25, in the Public Records of Bay County, Florida, being the point which intersects the South right of way line of 13th Street (66' right of way) with the East right of way line of Bayview Avenue (50' right of way), a vacated right of way, vacated by City Ordinance No. 447; thence run S89°59'50"E along the South right of way of said 13th Street for 355.03 feet, more or less, to the West right of way line of Cincinnati Avenue; thence run Southerly along said West right of way line 130 feet, more or less, to the waters edge of St. Andrews Bay; thence meander along the waters edge of said St. Andrews Bay southerly and then easterly to a point where said waters edge intersects with the West boundary line of said Block 18 and the East right of way line of said vacated Bayview Avenue; thence run North along the West boundary line of said Block 18 (also being the East right of way of said vacated Bayview Avenue), 477 feet, more or less, to the South right of way line of said 13th Street and the Point of Beginning.

**Parcel D:**

**Lots 1 and 2, in Block 18, according to plat of St. Andrews Bay Railroad Land & Mining Company of E. L. Wood, of St. Andrews, Florida, filed with the Clerk of Circuit Court of Bay County, Florida, in Plat Book 6, page 25, being in and a part of the Northwest Quarter of Section 1, Township 4 South, Range 15 West..**

**William Loren Smith**

**Parcel E:**

**Begin at the Southeast Corner of Lot 9, Block 17, of St. Andrew Bay Railroad and Mining Company Plat, recorded in Plat Book 6, page 25, located in the Northwest Quarter (NW 1/4) of Section 1, Township 4 South, Range 15 West, Bay County, Florida; thence East 25 feet to the centerline of Chestnut Avenue, closed by City Ordinance of Record; thence North 109.10 feet to the waters edge of Lake Ware; thence Northwesterly along said Lake 90 feet; thence South 131 feet; thence East 62 feet to the Point of Beginning..**

**Smiths' Incorporated**

**Parcel F:**

**Lots 3, 16, 17 and 18, Block 18, Plat of City Lots situated in the Northwest Quarter of Section 1, Township 4 South, Range 15 West, according to the Plat thereof recorded in Plat Book 6, page 25, in the public records of Bay County, Florida.**

all of the above parcels together with:

**(b) All fixtures, including trade fixtures, and all machinery, equipment and other personal property of every kind and nature whatsoever, now or hereafter owned by Debtor/Mortgagor and now or hereafter located in, under, on, or affixed to, or used or intended to be used in connection with the improvements now or hereafter situated on the real property described on Exhibit "A" (the "Land") or with the operation of such improvements, including all additions and betterments to, and extensions, improvements, renewals and replacements of, any of the foregoing; and**

**All rents, profits, issues and revenues of the Land and improvements thereon from time to time accruing, whether under leases or tenancies now existing or hereafter created; and**

**All right, title and interest of Debtor/Mortgagor in and to all riparian and littoral rights and all oil, gas, mineral and timber now or hereafter located on or under the Land; and**

**All right, title and interest of Mortgagor in all trade names, trademarks and servicemarks used in connection with the Land; and**

**All easements, rights-of-way and rights used in connection therewith or as a means of access to the Land and all right, title and interest of Debtor/Mortgagor in and to any streets and roads abutting the Land to the center lines thereof and in all utility, water, sanitary and stormwater lines and systems now or hereafter located on or adjacent to the Land; and**

**All judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the Land and improvements thereon or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Land or the improvements thereon or any part thereof, or to any rights appurtenant thereto, including any award for change of grade of streets; and**

**The loss proceeds of all hazard insurance policies payable with respect to damage to the fixtures and personal property above described and the improvements now or hereafter located on the Land; and**

**Any and all architectural, engineering or similar plans, plats or drawings; building and development permits, water and sewer permits, permit fees, impact fees, utility deposits and refunds, and all development rights relating to the Land; and**

**All payments due Debtor/Mortgagor under any contracts and purchase orders; and**

**Any and all rights to receive any credit or refund for the payment of any state, local or federal tax assessed against the collateral described herein; and**

**All accounts (including contract rights) and general intangibles pertaining to, arising from or in the connection with the Land; and**

**All right, title and interest of Debtor/Mortgagor in Debtor/Mortgagor's accounts receivables and other proceeds from the sale of inventory; and**

**Any and all inventory of Debtor/Mortgagor, including all goods, merchandise, raw materials, goods in process, finished goods and other tangible personal property now owned or hereafter acquired and held for sale or lease or to be used or consumed in the business of Debtor/Mortgagor and now or hereafter located on the Land, and all additions and accessions thereto; and**

**All proceeds, products, replacements, additions, substitutions, renewals and accessions of any of the above items.**