

IN THE CIRCUIT COURT IN AND FOR BAY COUNTY, FLORIDA

WHITNEY BANK,

Plaintiff,

vs.

Case No.: 14-1167CA

BOYD BROTHERS, INC.;
GULFCOAST BUSINESS FINANCE, INC.;
UNITED STATES OF AMERICA,
SMALL BUSINESS ADMINISTRATION;
EVERBANK COMMERCIAL FINANCE, INC. f/k/a
TYGRIS VENDOR FINANCE, INC. f/k/a
US EXPRESS LEASING, INC.;
MAC PAPERS, INC.;
CAPITAL ONE EQUIPMENT FINANCE CORP. f/k/a
ALL POINTS CAPITAL CORPORATION, successor to
RCA CAPITAL CORP.,
STEVE PETTY;
DIRECT MARINE MARKETING, LLC; and
BRIAN BROWN d/b/a Brian Brown's Automotive,

Defendants.

FILED
2015 FEB - 3 A 11: 26
BILL KINSAUL
CLERK
COURT
BAY COUNTY, FLORIDA

FINAL JUDGMENT OF FORECLOSURE
(Count I of Plaintiff's Amended Complaint)
and
ORDER DIRECTING RENTS

This matter is before the Court on Plaintiff's Motion for Summary Final Judgment of Foreclosure and Motion for Order Directing Rents, and the Court having reviewed the pleadings on file, and having heard argument of counsel, finds that a final judgment of foreclosure and order directing rents should be entered, it is, therefore,

ORDERED AND ADJUDGED THAT:

1. As to Count I of the Amended Complaint, Plaintiff, WHITNEY BANK, 1022 West 23rd Street, Panama City, FL 32405, is due

Principal	\$3,979,749.49
Interest as of the date of the judgment	\$ 144,927.70
Property Taxes (2010, 2011 & 2013)	\$ 110,610.32

Environmental Phase 1 Fee	\$ 1,650.00
Appraisal Fee	\$ 7,900.00
Attorneys' fee total:	\$ 18,679.00
Court costs, now taxed	\$ 2,676.50
Subtotal	\$4,266,193.01
LESS: Escrow Balance	\$ 0.00
LESS: Other:	<u>\$ 0.00</u>
TOTAL AMOUNT DUE:	\$4,266,193.01

which total amount shall bear interest at the statutory rate of 4.75% per year.

2. **Lien on Property.** Plaintiff holds a lien for the total sum superior to all claims or estates of Defendants on the following described property located in Bay County, Florida:

PARCEL I:

Beginning at a point on the North R/W line of Florida 30-A, which is 40 feet North and 300 feet West of the Southeast Corner of the Southeast Quarter of the Southwest Quarter of the Southwest Quarter of Section 33, Township 3 South, Range 14 West, Bay County, Florida; thence S89°43'W, 100 feet; thence North 618.4 feet; thence N89°43'E, 100 feet; thence South 618.4 feet to the Point of Beginning; being the West 100 feet of the East 400 feet of said Southeast Quarter of the Southwest Quarter of the Southwest Quarter of Section 33, Township 3 South, Range 14 West.

PARCEL II:

Beginning at a point on the North R/W line of Florida 30-A which is 40 feet North and 200 feet West of the Southeast Corner of the Southeast Quarter of the Southwest Quarter of the Southwest Quarter of Section 33, Township 3 South, Range 14 West, Bay County, Florida; thence S89°43'W, 100 feet; thence North 618.4 feet; thence N89°43'E, 100 feet; thence South 618.4 feet to the Point of Beginning; being the West 100 feet of the East 300 feet of said Southeast Quarter of the Southwest Quarter of the Southwest Quarter of Section 33, Township 3 South, Range 14 West.

PARCEL III:

Beginning at a point on the North R/W line of Florida 30-A which is 40 feet North of and N89°43'E, 100.7 feet from the Southwest Corner of the Southeast Quarter of the Southwest Quarter of the Southwest Quarter of Section 33, Township 3 South, Range 14 West, Bay County, Florida; and running thence North 618.4 feet; thence N89°43'E, 170.00 feet; thence South 618.4 feet; thence S89°43'W, 170 feet to the Point of Beginning. Less that portion lying within Parcel I above.

PARCEL IV:

Beginning at a point on the North R/W line of Florida 30-A which is 40 feet North of the Southeast Quarter of the Southwest Quarter of the Southwest Quarter of Section 33, Township 3 South, Range 14 West, Bay County, Florida; thence with said right of way line S89°43'W 200 feet; thence North 618.4 feet; thence N89°43"E 200 feet; thence South 618.4 feet to the Point of Beginning. Being the East 200 feet of said Southeast Quarter of Southwest Quarter of Southwest Quarter of Section 33, Township 3 South, Range 14 West, Bay County, Florida.

PARCEL V:

Commence at the Southwest corner of the Southeast Quarter of the Southwest Quarter of the Southwest Quarter of Section 33, Township 3 South, Range 14 West, Bay County, Florida; thence North 40 feet to the North right of way line of 15th street (80 foot right of way); thence N89°43'00"E along said North right of way line of 100.7 feet; thence leaving said North right of way line run N00°36'54"E for 194.42 feet to the Point of Beginning; then continue N00°36'54"E for 423.47 feet to the South right of way line of 16th Street; thence S89°44'14"E along said South right of way line for 370.55 feet; thence leaving said South right of way line run S00°44'35"W for 431.31 feet; thence N89°10'26"W for 169.08 feet; thence N00°27'30"E for 83.95 feet; thence N89°50'40"W for 119.56 feet; thence S00°22'18"W for 78.41 feet; thence N89°07'54"W for 81.05 feet to the Point of Beginning.

3. **Sale of Property.** If the total sum with interest at the rate described in paragraph 1 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 to the highest bidder for cash, except as set forth hereinafter, on May 4, 2015, 2015 at 11:00 am Central Time, at www.bay.realforeclose.com in accordance with Chapter 45, Florida Statutes. At the time of the sale, the successful high bidder shall post with the Clerk a cash deposit equal to five percent (5%) of the final bid. The balance of the final bid shall be paid in cash or cash equivalent to the Clerk no later than 4:00 p.m. on the sale date. The successful high bid shall be exclusive of the clerk's registry fee and documentary stamps on the Certificate of Title which shall be paid by the successful bidder.

4. **Costs.** Plaintiff shall advance all subsequent costs of this action and shall be reimbursed for them by the Clerk if Plaintiff is not the purchaser of the property for sale, provided, however, that the purchaser of the property for sale shall be responsible for the

documentary stamps payable on the certificate of title. If Plaintiff is the purchaser at the sale, 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.

5. **Distribution of Proceeds.** On filing the Certificate of Title, the Clerk shall distribute the proceeds of the sale as far as they are sufficient, by paying: First, all of Plaintiff's costs accruing subsequent to this judgment; second, documentary stamps affixed to the Certificate of Title, unless the documentary stamps have already been paid by a purchaser other than Plaintiff; third, Plaintiff's attorneys' fees; fourth, the total sums due Plaintiff less the items paid plus interest at the rate prescribed in paragraph 1 from this date to the date of the sale; and by retaining any amount remaining pending further order of this Court.

6. **Right of Redemption/Right of Possession.** On filing of the certificate of sale, Defendants and all persons claiming under or against Defendants since the filing of the notice of lis pendens shall be foreclosed of all estate of claim in the property and Defendants' right of redemption as prescribed by §45.0315, Florida Statutes (2013) shall be terminated, except as to claims or rights under Chapter 718 or Chapter 720, Florida Statutes, if any. Upon the filing of the certificate of title, the person named on the certificate of title shall be let into possession of the property.

7. **Attorney's Fees.** The court finds, based upon the affidavits presented and upon inquiry of counsel for the Plaintiff that 66.1 hours were reasonably expended by Plaintiff's counsel and that the hourly rate of \$285 for attorneys and that 32.3 hours expended by paralegals at an hourly rate of \$125 is appropriate. Plaintiff's counsel represents that the attorneys' fees awarded does not exceed its contract fee with the Plaintiff. The Court finds that there is no reduction or enhancement for consideration by the court pursuant to *Florida Patients Compensation Fund v. Rowe*, 472 So. 2d 1145 (Fla. 1985).

8. Defendant, Boyd Brothers, Inc., and any and all of its agents or any other person involved in the rental of the subject property shall forward to Plaintiff all monies currently being

held as rents arising from the subject property, and all future rents received on a monthly basis, until entry of the Certificate of Title. The monies are to be made payable to Whitney Bank and delivered to Megan F. Fry, Esquire at Post Office Box 13010, Pensacola, FL 32591-3010. ~~An accounting shall be delivered with all monies delivered. Additionally, Defendant, Boyd Brothers, Inc., and anyone acting on its behalf in the rental of the subject property, shall provide Plaintiff's attorney with a list of all tenants leasing any portion of the subject property including the address of each tenant, copies of any written leases concerning the subject property, the terms of any oral leases concerning the subject property, the amount of any security deposits held, and the amount of rent paid by each tenant and an accounting rents due as of the date of this judgment within ten (10) days from the entry of this judgment.~~

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D*

9. **Jurisdiction Retained.** Jurisdiction of this action to enter further orders that are proper, including but not limited to, writ(s) of possession.

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 THE FINAL JUDGMENT.


IF YOU ARE A SUBORDINATE LIENHOLDER 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.

IF YOU ARE THE PROPERTY OWNER, YOU MAY CLAIM THESE FUNDS YOURSELF. YOU ARE NOT REQUIRED TO HAVE A LAWYER, OR ANY OTHER REPRESENTATION AND YOU DO NOT HAVE TO ASSIGN YOUR RIGHTS TO ANYONE ELSE IN ORDER FOR YOU TO CLAIM ANY MONEY TO WHICH YOU ARE ENTITLED. PLEASE CHECK WITH THE CLERK OF COURT, BAY COUNTY, WITHIN 10 DAYS AFTER THE SALE TO SEE IF THERE IS ADDITIONAL MONEY FROM THE FORECLOSURE SALE THAT THE CLERK HAS IN THE REGISTRY OF THE COURT.

IF YOU DECIDE TO SELL YOUR HOME OR HIRE SOMEONE TO HELP YOU CLAIM THE ADDITIONAL MONEY, YOU SHOULD REAL VERY CAREFULLY ALL PAPERS YOU ARE REQUIRED TO SIGN, ASK SOMEONE ELSE, PREFERABLY AN ATTORNEY WHO IS NOR RELATED TO THE PERSON OFFERING TO HELP YOU, TO MAKE SURE THAT YOU UNDERSTAND WHAT YOU ARE SIGNING AND THAT YOU ARE NOT TRASFERRING YOUR PROPERTY OR THE EQUITY IN YOUR PROPERTY WITHOUT THE PROPER INFORMATION. IF YOU CANNOT AFFORD TO PAY AN ATTORNEY, YOU MAY CONTACT NORTHWEST FLORIDA LEGAL SERVICES, INC. AT (850) 769-3581, TO SEE IF YOUQUALIFY FINANCIALLY FOR THEIR SERVICES. IF THEY CANNOT ASSIST YOU, THEY MAY BE ABLE TO

REFER YOU TO A LOCAL BAR REFERRAL AGENCY OR SUGGEST OTHER OPTIONS. IF YOU CHOOSE TO CONTACT LEGAL SERVICES OF NORTH FLORIDA, INC. FOR ASSISTANCE, YOU SHOULD DO SO AS SOON AS POSSIBLE AFTER RECEIPT OF THIS NOTICE.

DONE AND ORDERED in Chambers in Panama City, Bay County, Florida this 2nd day of February 2015.


THOMAS ELLNOR
CIRCUIT JUDGE

Conformed copies to:

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