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**IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA**

HARVESTERS FEDERAL CREDIT UNION,

Plaintiff,

v.

CASE NO.:2018 CA 001179

AUSTIN AND STEVENS, INC., BEN BARTOWS  
BAR, LLC, GLENN B. AUSTIN, RICK JOHNSTON'S  
CABANA PROPERTY, LLC, THOMAS WALKER ELECTRIC  
COMPANY, INC., COMMERCIAL DOOR SYSTEMS  
OF FLORIDA, INC., TIMEPAYMENT CORP., SYNOVUS  
BANK, JOSHUA B. COOPER, AND THE STATE OF FLORIDA.

Defendants.

**DEFICIENCY JUDGMENT,  
AND FINAL JUDGMENT OF FORECLOSURE (COUNT 2)**

THIS CAUSE came for hearing on January 9, 2020 upon the Motion for Deficiency Judgment, and Motion for Summary Judgment of Foreclosure of Liquor License (on Count 2 of the Complaint) (collectively, the "Motion") filed by HARVESTERS FEDERAL CREDIT UNION ("Plaintiff"), whose address is 400 Hwy. 29 S, Cantonment, Florida 32533. Defendants, AUSTIN AND STEVENS, INC., a Florida corporation (hereinafter "Austin & Stevens"), whose address is 3209 Samantha Drive, Cantonment, FL 32533; BEN BARTOWS BAR, LLC, a Florida limited liability company (hereinafter "Ben Bartows"), whose address is 3209 Samantha Drive, Cantonment, FL 32533; GLENN B. AUSTIN, (hereinafter "Austin"), whose address is 3209 Samantha Drive, Cantonment, FL 32533; RICK JOHNSTON'S CABANA PROPERTY, LLC, a Florida limited liability company (hereinafter "Cabana"), whose address is 48 Stanley Street, St. Thomas, Ontario N5T 3E9 CA; THOMAS WALKER ELECTRIC COMPANY, INC., a Florida corporation (hereinafter "Walker Electric"), whose address is 1201 Paulding Avenue, Pensacola, FL 32507; COMMERCIAL DOOR SYSTEMS OF FLORIDA, INC., a Florida corporation (hereinafter "Commercial Door"), whose address is 612 W. Romana Street, Pensacola, FL 32502;

TIMEPAYMENT CORP., a Delaware corporation (hereinafter "TimePayment"), whose address is 1600 District Avenue, Burlington, MA 01803; SYNOVUS BANK, a Georgia banking corporation (hereinafter "Synovus"), whose address is 1111 Bay Avenue, Columbus, GA 31901; JOSHUA B. COOPER ("Cooper"), whose address is 2081 W. Intendencia Street, Pensacola, FL 32502; THE STATE OF FLORIDA, whose address is c/o 2205 La Vista Avenue, Suite B, Pensacola, FL 32504; and FLORIDA DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO, a political subdivision of THE STATE OF FLORIDA ("Division"), whose address is 2601 Blair Stone Road, Tallahassee, FL 32399-2202 have been properly served and have either filed an answer through their attorney(s) of record or have been defaulted for failure to file an answer. Proper notice of said hearing has been provided to Austin & Stevens, Ben Bartows, Austin, Cabana, Walker Electric, Commercial Door, TimePayment, Synovus, Cooper, the State of Florida, and the Division (collectively, individually and interchangeably the "Defendants").

This Court being fully advised and having considered the arguments, pleadings, applicable law and evidence before the Court, finds:

(1) that Counts 1 and 3 of the Complaint seeking foreclosure of certain real property (Count 1) and personal property (Count 3) were previously disposed of by that certain Final Judgment of Foreclosure dated May 23, 2019, with the exception of seeking a deficiency judgment for the remaining amounts due and owing after the foreclosure of said real property and personal property, as more fully set forth in the Motion;

(2) that based upon the evidence presented by Plaintiff at the hearing, the real property foreclosed on July 31, 2019 pursuant to the Final Judgment of Foreclosure dated May 23, 2019 had a fair market value as of July 31, 2019 in the amount of \$969,020.15, which is based on an appraised value of foreclosed real property of \$980,000.00, less unpaid property taxes due and owing for 2018 in the amount of \$10,979.85;

(3) that after applying said valuation of the foreclosed real property as a credit against the balance due and owing under the Final Judgment of Foreclosure dated May 23, 2019, a

balance remains due and owing, as more fully set forth in Plaintiff's Supplemental Affidavit as to Indebtedness dated October 11, 2019 filed in conjunction with the Motion, and that Plaintiff is entitled to a deficiency judgment against Austin & Stevens and Ben Bartows for the amounts set forth in said Supplemental Affidavit;

(4) that based on the foregoing, Plaintiff has sustained the allegations of the Motion against the Defendants, and is entitled to the relief prayed for, including foreclosure of the liquor license under Count 3 pursuant to Fla. Stat. 561.65(5)-(7); and

(5) that the Court has jurisdiction to grant same.

Based on said findings, it is hereby ORDERED AND ADJUDGED as follows:

1. This Court has jurisdiction of the parties in this cause and the subject matter hereof and has jurisdiction to render this judgment; further, that the allegations contained herein have been proved by competent evidence, and there are no material issues of fact or law and this Final Judgment is in satisfaction of all counts in the complaint.

2. That the equities of this cause are with the Plaintiff and against the Defendants.

3. That Plaintiff recover from Austin & Stevens and Ben Bartows, jointly and severally,

the following amounts due under the Final Judgment of Foreclosure dated May 23, 2019:

Judgment Total (from Final Judgment of Foreclosure dated May 23, 2019)	\$1,055,100.66
Pre-judgment accrued interest of \$41,265.00 (at \$393.00 per day) on the First Note Subtotal accruing from February 8, 2019 through May 23, 2019 (i.e. 105 days)	\$41,265.00
Pre-judgment accrued interest of \$6,289.50 (at \$59.90 per day) on the Second Note Subtotal accruing from February 8, 2019 through May 23, 2019 (i.e. 105 days)	\$6,289.50
Post-judgment accrued interest <sup>1</sup> at 6.57% on the Judgment Total, accruing from May 24, 2019 through July 1, 2019 (i.e. 39 days)	\$7,740.63

<sup>1</sup>  $\$1,055,100.66 + \$41,265.00 + \$6,289.50 = \$1,102,655.16 \times 6.57\%$  (April 1, 2019 Statutory Interest Rate)  $= \$72,444.44 / 365 = \$198.47$  per day  $\times 39$  days  $= \$7,740.63$

Post-judgment accrued interest <sup>2</sup> at 6.77% on the Judgment Total, accruing from July 2, 2019 through July 31, 2019 (i.e. 30 days)	\$6,135.59
Balance as of July 31, 2019	\$1,116,531.38
Less: FMV as of Foreclosure Sale Date \$980,000.00 Plus 2018 Property Taxes <sup>3</sup> -\$10,979.85 Subtotal \$969,020.15	-\$969,020.15
Balance as of July 31, 2019 (after applying credit for value of foreclosed real property)	\$147,511.23
Plus: Post-judgment accrued interest <sup>4</sup> at 6.77% on the Judgment Total, accruing from August 1, 2019 through September 30, 2019	\$1,668.97
Plus: Post-judgment accrued interest <sup>5</sup> at 6.89% on the Judgment Total, accruing from October 1, 2019 through October 11, 2019	\$306.29
<b>Total Remaining Balance as of October 11, 2019</b>	<b>\$149,486.49</b>

plus interest accruing after October 11, 2019 at the rate of 6.89% per year, said rate to be adjusted quarterly on January 1, April 1, July 1, and October 1 of each year in accordance with §55.03, Florida Statutes, from the date of this Judgment until paid.

4. Plaintiff holds a lien for the amount equal to the indebtedness described in paragraph 3 above upon the property covered by Plaintiff's lien and security interest on the liquor license owned by Austin & Stevens with license no. BEV2700106 (4COP) (the "Liquor License"), said lien which liens are prior, paramount and superior to all rights, claim, title, interest, liens, encumbrances and equities of the Defendants, and all persons, firms or corporations claiming by, through or under them, and any junior lienholders; and that if said indebtedness is not paid said Liquor License be sold by the Clerk of this Court at public sale at 11:00 A.M. Central Time on the

<sup>2</sup>  $\$1,055,100.66 + \$41,265.00 + \$6,289.50 = \$1,102,655.16 \times 6.77\%$  (July 1, 2019 Statutory Interest Rate) =  $\$74,649.75 / 365 = \$204.51$  per day  $\times 30$  days = \$6,135.59

<sup>3</sup> Account #10-1S-29-1101-023-001 (\$10,979.85)

<sup>4</sup>  $\$147,511.23 \times 6.77\%$  (July 1, 2019 Statutory Interest Rate) =  $\$9,986.51 / 365 = \$27.36$  per day  $\times 61$  days = \$1,668.97

<sup>5</sup>  $\$147,511.23 \times 6.89\%$  (October 1, 2019 Statutory Interest Rate) =  $\$10,163.52 / 365 = \$27.84$  per day  $\times 11$  days = \$306.29

25<sup>th</sup> day of February, 2020, to the highest and best bidder or bidders for cash, except as set forth hereinafter, at [www.escambia.realforeclose.com](http://www.escambia.realforeclose.com), after having first given notice as required by Section 45.031, Florida Statutes.

5. 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, except as indicated otherwise. If Plaintiff is the purchaser, the clerk shall credit Plaintiff's bid with the total sum with interest and cost accruing subsequent to this judgment, or such part of it, as is necessary to pay the bid in full. If prior to or after the sale, Plaintiff shall be required to advance any monies pursuant to the provisions hereof, then Plaintiff or its attorneys shall so certify to the Clerk of this Court by affidavit, and the amount due to Plaintiff as set forth above shall be increased by the amount of such advances without further order of the Court. If Plaintiff is the successful bidder at the sale, Plaintiff's rights as such may be assigned to a third party and, in that event, the Clerk of this Court is hereby ordered and directed to issue the Certificate of Title to Plaintiff's assignee upon notice to the Clerk by Plaintiff of said assignments and without further order of this Court.

6. On filing the Certificate of Title, the Clerk shall, except as otherwise indicated, distribute the proceeds of the sale, so far as they are sufficient by paying: first, to the lienholder or lienholders in the order of date of filing and, second, to creditors who have paid or by law are obligated to pay federal or state excise taxes on purchases by the licensee; and the balance shall be paid as directed in the judgment of foreclosure. If the high bidder at the sale is any party other than Plaintiff, then that high bidder shall, as a condition of being high bidder, pay to the Clerk of the Court all sums bid, plus the registry fee and all documentary stamps tax necessary for the issuance of the Certificate of Title.

7. IF THE LIQUOR LICENSE 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 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.

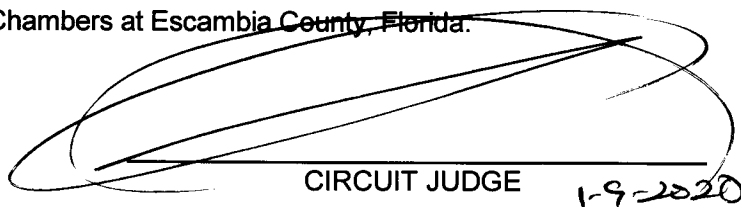
8. On filing the Certificate of Sale, the Defendants, any and all persons claiming by, though, or under the Defendants, since the date of the filing of this suit, are forever barred and foreclosed of and from all right, title, interest, claim, or demand of whatever nature in or to the Liquor License.

9 The Division may rely upon this judgment and the Certificate of Title as evidence of the titleholder's right to said Liquor License, but the transfer of the Liquor License to said titleholder shall be subject to applicable Florida law, including all rules and regulations of the Division.

10. Jurisdiction over this action, and the Judgment rendered herein, including without limitation Counts 2, 4, and 5 of the Complaint, is retained to enter such further orders as are proper, and including, without limitation, Writs of Assistance, possession, and deficiency judgments.

11. If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the office of Matthew C. Hoffman, Esquire, of Carver, Darden, Koretzky, Tessier, Finn, Blossman & Areaux, LLC, 801 West Romana Street, Suite A, Pensacola, Florida, 32502, (850) 266-2300, within two (2) working days of your receipt of this Final Judgment of Foreclosure.

DONE AND ORDERED in Chambers at Escambia County, Florida.



CIRCUIT JUDGE 1-9-2020

Conformed Copies to:

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