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11/6/2015 11:09:47 AM
Ramsey County, MN

STATE OF MINNESOTA **DISTRICT COURT**

COUNTY OF RAMSEY **SECOND JUDICIAL DISTRICT**

Court File No.: 62-CV-15-2241

JN Homes, LLC,

Plaintiff,

vs.

McKusick Building Services, LLC, John McKusick, John Doe, Mary Roe and ABC Corporation,

Defendants.

Case Type: 10 - Other Civil
Judge John H. Guthmann

FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER FOR JUDGMENT AND JUDGMENT

Plaintiff JN Homes, LLC, by and through its respective counsel, Jared M. Goerlitz, PFB Law, Professional Association, 55 East 5th Street, St. Paul, MN 55101, and Defendant McKusick Building Services, LLC and John McKusick, by and through their respective counsel, Maureen A. Carlson, Thompson Hall Santi Cerny & Katkov, 901 Marquette Ave., AT&T Tower, Suite 1675, Minneapolis, MN 55402, hereby agree and stipulate in the above-entitled matter as follows:

FINDINGS OF FACT

1. By Warranty Deed dated April 18, 2014, filed April 21, 2014, as Document No. A04504259 in the office of the Ramsey County Recorder, Defendant McKusick Building Services, LLC acquired title to that certain real estate located in Ramsey County, Minnesota, legally described as:

> Lot 21, Chute Brother's Division No. 13, Addition to the City of St. Paul, Minnesota, according to the plat thereof, Ramsey County, Minnesota,

(hereinafter the "**Subject Property**").

2. That on or about April 18, 2014, McKusick Building Services, LLC was to execute

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and deliver to Superior Financing, Inc., a Mortgage Note in the principal amount of $80,300.00 (hereinafter "Note") whereby it promised to pay to the order of Superior Financing, Inc., its successors and assigns, said sum, together with interest, all according to the terms of the Note. A true and correct copy of the unexecuted Note is attached to the Amended Complaint as Exhibit No. 1.

3. To secure payment of the indebtedness evidenced by the Note, Defendant McKusick Building Services, LLC, simultaneously with the delivery of the Note made, executed and delivered to for Superior Financing, Inc., mortgagee, a Mortgage dated April 18, 2014 (the "**JN Mortgage**"), on the Subject Property, which was recorded April 21, 2014, as Document No. A04504260 with the Ramsey County Recorder. A true and correct copy of the Mortgage is attached to the Amended Complaint as Exhibit No. 2.

4. As part of the financing on the Note and JN Mortgage, Defendant John McKusick executed a Statement of Facts regarding the financing and also personally guaranteed the Defendant McKusick Building Services, LLC's obligations on the Note. A true and correct copy of the Statement of Facts and the Personal Guaranty are attached to the Amended Complaint as Exhibits Nos. 3 and 4 respectively.

5. By Assignment of Mortgage dated April 18, 2014 and recorded on July 18, 2014 as Document No. A04515813 with the Ramsey County Recorder, Superior Financing, LLC assigned the Mortgage to Plaintiff JN Homes, LLC. A true and correct copy of said Assignment of Mortgage is attached to the Amended Complaint as Exhibit No. 5.

6. The closing for this mortgage loan financing was to result in the Note and JN Mortgage from Defendant McKusick Building Services, LLC in exchange Defendant McKusick Building Services, LLC for receiving the funds. Now, although Defendant McKusick Building

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Services, LLC received the mortgage loan financing as evidenced by the HUD-1 Settlement Statement attached to the Amended Complaint as Exhibit No. 6, Plaintiff JN Homes, LLC has only been able to locate the JN Mortgage from the closing and no executed Note.

7. Plaintiff JN Homes, LLC is now the holder of the Note, or debt, and JN Mortgage.

8. Defendant McKusick Building Services, LLC is in actual possession of the Subject Property.

5. The JN Mortgage provides that, upon default in the terms and conditions of the mortgage, or the note, the mortgagee, its successors and assigns may declare the entire sum secured by said mortgage immediately due and payable.

6. Defendants McKusick Building Services, LLC and John McKusick are in default under the JN Mortgage by reason of their failure to pay off the mortgage upon maturity on December 1, 2014.

7. Based upon the acceleration clause contained in the JN Mortgage, Plaintiff has elected to declare the total amount of principal and interest outstanding on the JN Mortgage immediately due and payable. The outstanding principal balance is $94,234.20.

8. Plaintiff has complied with all conditions precedent to foreclosure and/or acceleration of the indebtedness of the Mortgage and all notice requirements of the statutes and/or the Mortgage.

9. No other action or proceeding at law or in equity has been commenced for the collection of the debt secured by the Mortgage or any part thereof.

12. Defendants McKusick Building Services, LLC and John McKusick and Plaintiff JN Homes, LLC are not aware of any party with an interest in the action. Plaintiff and Defendants McKusick Building Services, LLC and John McKusick are entering into this Stipulation so

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Plaintiff can obtain a final Order.

Based upon the foregoing, the Court makes the following as its:

CONCLUSIONS OF LAW

1. Based upon this stipulation between Defendants McKusick Building Services, LLC and John McKusick, Plaintiff JN Homes, LLC shall be entitled to a final order for the following relief.

2. Defendant McKusick Building Services, LLC and John McKusick hereby acknowledge Plaintiff has a valid subsisting and enforceable note, mortgage and guaranty to support the relief and amounts outstanding below.

3. That JN Mortgage Document No. A04504260 is a first mortgage lien upon the Subject Property prior and superior to the interest of the Defendants.

4. That through October 31, 2015, there is due from Defendants McKusick Building Services, LLC to Plaintiff the sum of $106,576.61, which includes principal, interest and other fees and costs, and attorney's fees and costs of $3,589.00 for a total amount due of $110,165.61 as provided in the Note and such other and further sums as may be now as hereafter payable to Plaintiff pursuant to the Note and Mortgage.

5. That Plaintiff be granted the usual decree of foreclosure of the JN Mortgage to satisfy said judgment; that the premises described as:

> Lot 21, Chute Brother's Division No. 13, Addition to the City of St. Paul, Minnesota, according to the plat thereof, Ramsey County, Minnesota

be sold in a manner provided by law by the Sheriff of Ramsey County; that the proceeds of said sale be applied, first, to the payment of costs and disbursements of said sale and, second, on the principal of said judgment; that the purchaser at said sale or assigns, if no redemption therefrom is made within the period fixed by statute therefore, be decreed to be absolute owner of the premises

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at said sale.

6. That the lien of the JN Mortgage is prior, paramount and superior to all other liens or interest on, in or against the Subject Property, and barring and foreclosing all Defendants from any equity of redemption, equity, lien or interest in the Subject Property, except the right to redeem from said foreclosure sale as provided by statute.

7. That Plaintiff shall be entitled to a money judgment in favor of Plaintiff and against Defendants McKusick Building Services, LLC and John McKusick, and each of them, for any deficiency existing after the sale of the Subject Property.

8. To allow Defendants McKusick Building Services, LLC and John McKusick to sell the property and/or reach an alternate resolution with Plaintiff, Plaintiff and Defendant McKusick Building Services, LLC and John McKuisck agree this case shall be stayed until October 31, 2015 at which time Plaintiff may proceed with foreclosure.

9. For such other and further relief as the court deems just and equitable.

ORDER FOR JUDGMENT

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated this _____ day of _____, 2015.

BY THE COURT

Guthmann, John (Judge)
Nov 6 2015 11:06 AM

Judge John H. Guthmann

The Second Judicial District Court Administration, State of Minnesota, does hereby certify that the attached instrument is a true and correct copy of the official version of the court record.

Dated this 10th day of Nov. 2015

By Linda Draske, Deputy