

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

AMERICAN ACQUISITION PROPERTY I, LLC

PLAINTIFF

v.

Civil No. 09-5021

C & L PROPERTIES, LLC;
KIMBERLY A. LEDBETTER;
SPOUSE OF KIMBERLY A. LEDBETTER, if any;
FIRST FEDERAL BANK OF ARKANSAS, FA;
ARVEST MORTGAGE COMPANY;
SUPERIOR FEDERAL BANK, F.S.B.;
HARRINGTON, MILLER, NEIHOUSE & KIEKLAK, P.A.;
TENANTS OF 3015A YORKSHIRE, SPRINGDALE, AR,
if any;
TENANTS OF 3015B YORKSHIRE, SPRINGDALE, AR,
if any;
TENANTS OF 2844A YORKSHIRE, SPRINGDALE, AR,
if any;
TENANTS OF 3067A YORKSHIRE, SPRINGDALE, AR,
if any;
TENANTS OF 3067B YORKSHIRE, SPRINGDALE, AR,
if any;
TENANTS OF 777 ERIKA AVE., FAYETTEVILLE, AR,
if any;
TENANTS OF 779 ERIKA AVE., FAYETTEVILLE, AR,
if any;
TENANTS OF 801 ERIKA AVE., FAYETTEVILLE, AR,
if any;
TENANTS OF 803 ERIKA AVE., FAYETTEVILLE, AR,
if any;
TENANTS OF 835 ERIKA AVE., FAYETTEVILLE, AR,
if any;
TENANTS OF 837 ERIKA AVE., FAYETTEVILLE, AR,
if any;
TENANTS OF 861 ERIKA AVE., FAYETTEVILLE, AR,
if any; and
TENANTS OF 863 ERIKA AVE., FAYETTEVILLE, AR,
if any,

DEFENDANTS

and

ARVEST MORTGAGE COMPANY

CROSS-CLAIMANT

v.

HARRINGTON, MILLER, NEIHOUSE &
KIEKLAK, P.A.; KIMBERLY A. LEDBETTER;
TENANTS OF 861 ERIKA AVE., FAYETTEVILLE,
AR, if any; TENANTS OF 863 ERIKA AVE.,
FAYETTEVILLE, AR, if any,

CROSS-DEFENDANTS

ARVEST MORTGAGE COMPANY

COUNTER-CLAIMANT

v.

AMERICAN ACQUISITION PROEPRTY I, LLC

COUNTER-DEFENDANT

ARVEST MORTGAGE COMPANY

THIRD-PARTY PLAINTIFF

v.

CARL D. LEDBETTER

THIRD PARTY DEFENDANT

and

FIRST FEDERAL BANK OF ARKANSAS, FA

COUNTER-CLAIMANT

v.

AMERICAN ACQUISITION PROPERTY I, LLC

COUNTER-DEFENDANT

FIRST FEDERAL BANK OF ARKANSAS, FA

CROSS-CLAIMANT

v.

C & L PROPERTIES, LLC; HARRINGTON,
MILLER, NEIHOUSE & KIEKLAK, P.A.;
KIMBERLY A. LEDBETTER; SPOUSE OF
KIMBERLY A. LEDBETTER, if any;
TENANTS OF 3015A YORKSHIRE, SPRINGDALE,
AR, if any; and TENANTS OF 3015B
YORKSHIRE, SPRINGDALE, AR, if any;

CROSS-DEFENDANT

FIRST FEDERAL BANK OF ARKANSAS, FA

THIRD-PARTY PLAINTIFF

v.

DOUGLAS COMPANIES, INC.

THIRD-PARTY DEFENDANT

MEMORANDUM OPINION

Now on this 30th day of October, 2009, comes on for consideration Third-Party Plaintiff Arvest Mortgage Company's **Motion For Default Judgment Against Separate Defendant Carl D. Ledbetter** (document #71), and from said motion, and other matters and things appearing, the Court finds and orders as follows:

1. Arvest Mortgage Company ("Arvest") filed an Amended Cross-Claim, Counterclaim And Third-Party Complaint, in which it alleged that Carl D. Ledbetter ("Ledbetter") and his wife executed four Promissory Notes -- referred to as Notes One through Four -- as to which Arvest is now the secured creditor. It is further alleged that all four Promissory Notes are in default; that all have been accelerated pursuant to the terms thereof; and that the following amounts were due and owing on them as of February 9, 2009:

* On Note One, \$46,206.44, with interest accruing at 6.875% per annum;

* On Note Two, \$46,319.93, with interest accruing at 6.875% per annum;

* On Note Three, \$59,364.79, with interest accruing at

7.50% per annum; and

* On Note Four, \$60,507.23, with interest accruing at 7.50%.

Arvest further prayed for an award of "late fees," costs and expenses, and attorney's fees. No amounts were specified for these items in the Amended Cross-Claim, Counterclaim And Third-Party Complaint, but Arvest has submitted a proposed precedent asking for \$50.00 in costs and \$2,000.00 in attorney's fees. The Court considers these amounts reasonable, in light of the number of claims and parties in the case.

2. Ledbetter did not respond to the Amended Cross-Claim, Counterclaim And Third-Party Complaint, and Arvest now moves for default judgment. A Clerk's Default was entered against Ledbetter on September 28, 2009.

3. **F.R.C.P. 55** provides that the Clerk of Court is to enter default judgment upon an affidavit showing that plaintiff's claim is for a sum that can be made certain by computation, as is alleged here, although the Court does not find that this provision prevents it from entering such judgment instead of the Clerk. **Rule 54(c)** also applies to the situation. It provides that judgment by default "must not differ in kind from, or exceed in amount, what is demanded in the pleadings."

6. The Court has computed the amounts due as of the date of this Order under the pleadings as follows:

- * On Note 1, \$46,206.44, plus interest of \$2,287.23;
- * On Note 2, \$46,319.93, plus interest of \$2,292.84;
- * On Note 3, \$59,364.79, plus interest of \$3,205.70; and
- * On Note 4, \$60,507.23, plus interest of \$3,267.40.

Judgment for the combined total of these amounts will be awarded to Arvest. The Court will, in addition, award costs of \$50.00 and attorney's fees of \$2,000.00 to Arvest.

IT IS THEREFORE ORDERED that Third-Party Plaintiff Arvest Mortgage Company's **Motion For Default Judgment Against Separate Defendant Carl D. Ledbetter** (document #71) is **granted**, and default judgment will be entered separately for the sum of \$225,501.56.

IT IS SO ORDERED.

 /s/ Jimm Larry Hendren
JIMM LARRY HENDREN
UNITED STATES DISTRICT COURT