

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

**LNV CORPORATION
PLAINTIFF**

vs.

No. 5:10-cv-05083-JLH

**CHOICE INVESTMENTS, LLC,
DELMAR D. CLARK, TIMOTHY D. WHITE and
VICKIE L. WHITE, TRUSTEES OF THE
WHITE FAMILY TRUST,
u/t/a DATED SEPTEMBER 26, 2001
DEFENDANTS**

DEFAULT JUDGMENT AND DECREE OF FORECLOSURE

Now comes before the Court for consideration the Complaint in Foreclosure filed by LNV Corporation (“LNV”). Defendants Choice Investments, LLC and Delmar D. Clark have defaulted and LNV has filed a motion for default judgment as to these two defendants. Defendants Timothy D. White and Vickie L. White, Trustees of the White Family Trust u/t/a dated September 26, 2001, have appeared and agreed with plaintiff to the submission of the matter to the Court as a consent judgment as to them in all respects. Accordingly, the Court does find as follows:

1. This Court has jurisdiction of the subject matter and the parties to this action.
2. On September 15, 2010, the Clerk entered a Default as to each of the separate Defendants Choice Investments, LLC (“Choice”) and Delmar C. Clark (“Clark”).
3. On October 14, 2010, LNV filed its motion for default judgment seeking a default judgment against Choice and Clark supported by the Affidavit of Michael H.

Cottrell. The motion for default judgment is granted as to Choice and Clark.

4. On October 26, 2007, Choice executed a Note (the "Note") in favor of ANB Financial N.A. ("ANB") in the principal sum of \$410,000. The Principal and interest on the Note was payable in monthly payments of \$4,345.50 beginning November 26, 2007, and on the same date each succeeding calendar month thereafter until paid in full, with a final payment of principal and interest being due and payable October 26, 2010.

5. The Note is secured by a Mortgage executed by Choice and dated October 26, 2007 (the "Mortgage").

6. The Mortgage transferred to ANB an interest in the following described real property having a street address of 228 Lake Francis Drive, Siloam Springs, Arkansas 72761 and situated and being in the County of Benton, Arkansas:

LOTS 5 AND 6 OF JOHN E RODGERS'S FIRST SUBDIVISION TO SILOAM SPRINGS, BENTON COUNTY, ARKANSAS, BEING A PART OF THE NW ¼ OF THE SE ¼ OF SECTION 7, TOWNSHIP 17 NORTH, RANGE 33 WEST, EXCEPT THE NORTH 300 FEET OF THE EAST 170 FEET OF LOT 6.

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, crops, timber, all diversion payments or third party payments made to crop producers which are not directly related to crop production proceeds, and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as the "Property").

7. ANB perfected its security interest in the Property by filing the Mortgage of record in the real estate records of the Benton County Circuit Clerk's Office on October 31, 2007, in Mortgage Book 2007, Page 241115.

8. LNV is now the Holder of the Note and Assignee of the Mortgage.

9. The Mortgage contains a waiver of Choice's rights of statutory redemption of the Property and right of appraisalment of the Property.

10. Pursuant to Paragraph 14 of the Mortgage, Choice assigned and conveyed all of its rights, title and interest in existing or future leases and all rents and profits for the use or occupancy of the Property to the lender under the Mortgage. Accordingly, LNV is entitled to all rents receivable for the use and occupancy of the Property.

11. Choice is now in default under the terms of the Note, having failed to make the monthly payments.

12. Timothy D. White and Vickie L. White, Trustees of the White Family Trust, *u/t/a* Dated September 26, 2001 (the "**White Family Trust**") claim an interest in the Property by virtue of a Mortgage from Spring Lane Properties, LLC dated August 21, 2003, and recorded August 26, 2003, in the Benton County Circuit Clerk's office at Mortgage Book 2003, Page 200587. The Mortgage of LNV is superior to the White Family Trust's Mortgage from Spring Lane Properties, LLC by virtue of a Subordination Agreement dated October 17, 2007 and recorded October 31, 2007 in Mortgage Book 2007, Page 241128. The White Family Trust also claims an interest in the Property by virtue of a Mortgage from Choice dated October 7, 2008, and recorded October 20, 2008, in the Benton County Circuit Clerk's office at Mortgage Book 2008, Page 170183.

13. The Mortgage of LNV is superior to any interest in the Property that may be claimed by the White Family Trust, including any interest claimed under the Mortgage from Spring Lane Properties, LLC or the Mortgage from Choice.

14. LNV holds a valid first priority lien on the Property and is entitled to a

decree of this Court finding that it holds a valid first priority lien on the Property, superior to any interests that may be claimed by Choice, Clark, the White Family Trust, or any other party claiming by or through them.

15. LNV's right to foreclose its security interest in the Property has become absolute.

16. On or about October 26, 2007, Clark executed a Guaranty unconditionally guaranteeing the payment and performance of all of Choice's obligations to ANB (the "**Guaranty**").

17. Clark is now in default under the terms of the Guaranty having failed to pay and perform Choice's obligations under the Note upon demand by LNV.

18. LNV is entitled to an *in personam* judgment against Choice and Clark, jointly and severally, and to an *in rem* judgment against the Property, in the amount of \$515,934.31 as of October 11, 2010, plus interest of \$198.24 per day from October 11, 2010 until this Judgment is entered, plus reasonable attorneys' fees and costs of title evidence.

IT IS THEREFORE, CONSIDERED, ORDERED, ADJUDGED AND DECREED as follows:

(a) With respect to the Note and the Mortgage, LNV is awarded an *in personam* judgment against Choice Investments, LLC and Delmar D. Clark, jointly and severally, and an *in rem* judgment against the Property described in paragraph 6 herein, in the amount of \$515,934.31 as of October 11, 2010, plus interest of \$198.24 per day from October 11, 2010 until this Judgment is entered, plus all expenses incurred by LNV in protecting the value of the Property and LNV's rights in the Property, including but not

limited to costs, including costs of title evidence, of \$1,190.00, and reasonable attorneys' fees in the amount of \$6,400.00, for a total judgment of \$523,524.31 as of October 11, 2010, plus interest of \$198.24 per day from October 11, 2010 until this Judgment is entered. That, upon entry, post-judgment interest at ~~the statutory rate~~ ^{.30% per annum} on such amount shall accrue from this date until paid.

(b) That LNV's judgment constitutes a first lien position on the Property that is superior in right and time to the interests of any other party hereto and LNV is awarded foreclosure of the Mortgage held by LNV;

(c) That LNV's Mortgage and judgment liens against the Property are prior to and paramount to any right, title, claim, interest, equity, or estate of the Defendants or anyone claiming by, through, or under them. LNV's Mortgage and judgment liens are paramount to any right, title, claim, interest, equity or estate of anyone acquiring any interest in the Property after May 24, 2010, the date of the filing of the *Lis Pendens*.

(d) That if the foregoing judgment is not paid within the ten (10) days from the date hereof, the Commissioner appointed by this Court, hereinafter named, shall notice, advertise, and sell the Property at the courthouse of Benton County, Arkansas;

(e) The liens upon the Property should be and hereby are ordered foreclosed by the Court; that pursuant to such foreclosures of liens, the Circuit Clerk of Benton County, Arkansas, is hereby appointed Commissioner of the Court for purposes of selling all interests of the parties herein and to the Property at foreclosure sale of LNV's judgment herein granted;

(f) Such sale should be at public auction to the highest bidder for cash or upon credit of three (3) months, provided that if the sale is upon credit, a good and

sufficient surety to secure payment of the purchase price shall be given to the Commissioner, and the purchase price shall bear interest from the date of sale until paid at the highest rate allowed by law; provided, however, that if LNV is the highest bidder at the time of such foreclosure, LNV may pay the purchase price by credit given upon the judgment hereby granted LNV, except as to the cost of sale; that notice of the sale as hereby ordered, together with the terms thereof, shall be published in a newspaper in and with a general circulation in Benton County, Arkansas, such notice to be published at least 10 days prior to the date of sale;

(g) That, within 10 days from the date of sale, the Commissioner shall file a report of the sale with the Court;

(h) That upon confirmation of the sale herein ordered, the Commissioner hereby appointed should execute and deliver to the purchaser a Commissioner's Deed, which shall convey all title and interest of the parties therein and to the Property;

(i) The purchaser at the sale herein ordered shall, upon receipt of such conveyance, be entitled to a Writ of Possession or Writ of Assistance, upon application, to be placed in the possession of the Property;

(j) That all rights of homestead, dower, redemption, and appraisement have been waived by the terms of the Mortgage herein described, and each such right, on the part of Defendants and all parties hereto be and hereby are ordered forever barred;

(k) That such sale be decreed to be a permanent bar to all of the rights, titles, claims, interests, or liens of the Defendants and that same be forever barred;

(l) That in the event monies in excess of the cost of sale and LNV's judgment are received from the foreclosure sale, then those "excess" proceeds shall be held by the

Commissioner, subject to further order of this Court;

IT IS SO ORDERED this 5th day of ~~October, 2010~~ JANUARY, 2011



UNITED STATES DISTRICT

JUDGE

Approved as to form and content:

/s/ Grant E. Fortson

Grant E. Fortson (Bar No. 92148)

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