

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 13-cv-874-wmc

BRIAN K. DUERST, et al.,

Defendants.

JUDGEMENT OF FORECLOSURE AND SALE

The above-captioned matter having come before the Court to be heard, Honorable William M. Conley, United States District Judge for the Western District of Wisconsin, presiding without a jury, on October 8, 2014, the Plaintiff, United States of America ("Plaintiff"), having appeared by its attorney, the Office of the United States Attorney for the Western District of Wisconsin by Assistant United States Attorney Barbara L. Oswald, and no appearance having been made on behalf of the Defendants herein except for Landmark Services Cooperative, LLC by its attorney Randall Anderson; and it appearing by the Declaration of Barbara L. Oswald, Assistant United States Attorney, Office of the United States Attorney, on file herein, that all Defendants are in default, except Defendant Landmark Services; and it further appearing that due notice of the Motion for Judgment of Default and for Judgment on the Pleadings has been made to each of the Defendants, and that a Certificate of Service was filed with the Clerk of the United States District Court for the Western District of Wisconsin; and it

further appearing by due proof that due notice of the pendency of this action was duly filed in the Office of the Register of Deeds, Green County, Wisconsin, on March 19, 2014, said notice being filed subsequent to the filing of the Complaint herein, and more than twenty (20) days prior to the trial of this action; and proofs of the matters and things alleged in the Complaint and the computation of the amounts due Plaintiff having been duly taken in in open court, and the Court having filed its Findings of Fact and Conclusions of Law;

On application and motion of the Office of the United States Attorney for the Western District of Wisconsin, attorneys for Plaintiff,

Real Estate

1. IT IS ORDERED that there is now due and owing to Plaintiff as of and including October 8, 2014, the following sums: See Attachment A.

a.	Principal as of October 8, 2014	\$ 379,990.63
b.	Interest as of October 8, 2014	\$ <u>70,328.06</u>
	Total as of October 8, 2014	\$ <u>450,318.69</u>
c.	Court Costs and Disbursements	
	(1) United States Marshals Fees	\$ 163.60
	(2) Filing of Notice of Lis Pendens	\$ <u>30.00</u>
	Total Costs & Disbursements	\$ <u>193.60</u>
	TOTAL AS OF OCTOBER 8, 2014	\$ <u>450,512.29</u>

2. IT IS FURTHER ORDERED that the mortgaged premises, located in Green County, Wisconsin, and described as follows shall be sold as a whole at public auction in Green County, Wisconsin, by or under the direction of the United States Marshal for the Western District of Wisconsin:

All that part lying West of Argue Road in the North side of the Northwest Quarter of Section 19 described as follows:
Commencing at a point on the Section Line at a point 65 rods South of the NW corner of Said Section 19, running thence North 65 rods, thence East 94 rods, thence in a Southwesterly direction to the place of beginning; all in section 19, Town 4 North, Range 8 East, Town of Exeter, Green County, Wisconsin; Except Lots 1,2,3 of Certified Survey Map No. 2333, recorded in Volume Eight of Certified Survey Maps of Green County, WI on Page 39, as recorded in the office of the Register of Deeds for Green County, Wisconsin; Except Lots 4,5,6,7 of Certified Survey Map No. 2673, recorded in Volume Nine of Certified Survey Maps of Green County, WI on Page 169, as recorded in the office of the Register of Deeds for Green County, Wisconsin.

Except lands conveyed for highway purposes in Vol. 247 of Records, Page 247.

East Half of the Northeast Quarter lying East of Ward Creek in Section 24; Town 4 North, Range 7 East, Town of New Glarus, Green County, Wisconsin

Tax Parcel Numbers: 23014 01330000 23024 01740000

3. IT IS FURTHER ORDERED that in case of sale pursuant hereto, the United States Marshal shall give public notice of the time and place of such sale in the manner provided by law, and that publication of said notice be made in The Monroe Times, a newspaper published in the City of Monroe, Green County, Wisconsin; that

the Marshal shall allow either or any of the parties to this action to purchase at such sale the above-described premises; that the Marshal shall file with the Clerk of this Court his report of said sale, and shall also immediately after said sale deposit the proceeds thereof, after deducting the costs and expenses of the sale unless otherwise ordered by the Court; that said United States Marshal may accept from the purchaser at such sale, as a deposit or down payment upon the same, not less than ten percent (10%) of the purchase price, in which case such amount shall be so deposited as above provided, and the balance of the sale price shall be paid to the United States Marshal's Service by said purchaser at such sale, upon confirmation thereof, except that if Plaintiff be the successful bidder at such sale, the said United States Marshal may take the receipt of Plaintiff in lieu of said cash payment; that the Marshal, upon compliance on the part of the purchaser with the terms of such sale as required by law, shall make and execute to said purchaser a deed to the premises so sold, as above described, stating the price paid therefor; that the United States Marshal shall deliver such deed to said purchaser, upon compliance by said purchaser with the terms of such sale, and the payment by him of any balance of the sale price to be paid.

4. IT IS FURTHER ORDERED that the United States Marshal shall thereupon pay from the proceeds of said sale all claims superior to Plaintiff as determined by the Court and to Plaintiff the following sum: see Attachment A.

5. IT IS FURTHER ORDERED THAT unless otherwise ordered by the Court, the United States Marshal shall pay from the proceeds of the sale:

- a. debt to the United States by virtue of the Mortgages executed on December 19, 2003, and March 31, 2004, in the amount of \$268,684.10, plus necessary costs and disbursements;
- b. any remaining proceeds from the sale of the subject premises shall be paid to satisfy Defendant Landmark Services Cooperative's docketed lien interest before being applied to the remaining the amount in Paragraph 1 of said judgment, together with interest on all of said sums from the date of judgment at the rate set forth in 28 U.S.C. § 1961(a), from the date hereof, or so much thereof as the monies derived from the sale of said premises will pay the same, and take receipts therefor; and
- c. surplus money to the Clerk of Court, if any, shall be subject to the further order of the Court.

6. IT IS FURTHER ORDERED that if the proceeds of such sale be insufficient to pay the amounts aforesaid, said United States Marshal shall specify the amount of said deficiency in his report of sale. Deficiency judgment is not being sought herein.

7. IT IS FURTHER ORDERED that upon confirmation of sale of the mortgaged premises, the purchaser or purchasers, or his or their heirs, representatives or assigns, be let into possession of the premises sold, upon production of the Marshal's deed thereto or duly authenticated copy thereof; that each and every one of the parties

to this action who may be in possession of said premises, and every other person who since the filing of notice of the pendency of this action has come into possession of the same or any part thereof under them or either of them shall deliver to such grantee or grantees named in such deed possession of the mortgaged premises, and that a writ of assistance issue if necessary to secure such possession.

8. IT IS FURTHER ORDERED that the defendants and each of them, their heirs, successors and assigns, and all persons claiming under them or either of them after the filing of notice of the pendency of this action, be forever barred and foreclosed of all right, title, interest and equity of redemption in said mortgaged premises.

9. IT IS FURTHER ORDERED that Plaintiff may pay any taxes or insurance premiums on said mortgaged premises now due or which shall hereafter become due before the sale thereof and have a lien on said premises for the amount so paid with interest thereon from date of payment at the rate set forth in 28 U.S.C. § 1961(a); and that in the event any such payments are made, Plaintiff may obtain an order at the foot of this judgment directing that the amounts so paid, with interest, be likewise paid from the proceeds of the sale or redemption of said mortgaged premises.

10. IT IS FURTHER ORDERED that the defendants and all persons claiming under them be and they are hereby enjoined from committing waste upon said mortgaged premises and from doing any other act that may impair the value of the same.

Chattels

11. IT IS HEREBY ORDERED that there is now due and owing to Plaintiff as of and including the 8th day of October, 2014, under the provisions of the promissory notes and security agreements set forth in the Complaint, the following sums:

a.	Principal as of October 8, 2014	\$ 379,990.63
b.	Interest as of October 8, 2014	\$ <u>71,720.69</u>
	TOTAL AS OF OCTORBER 8, 2014	\$ <u>451,711.32</u>

12. IT IS FURTHER ORDERED that Plaintiff is entitled to immediate possession of the items of security on which Farm Service Agency has a first security interest, set out in the complaint on file herein, as listed in Exhibit A.

13. IT IS FURTHER ORDERED that Plaintiff may exercise its right to have execution issued and require the United States Marshal to take possession of said items of security at any time after the date of this judgment, and deliver the items of security to Plaintiff, and that a writ of execution issue if necessary to secure such possession.

14. IT IS FURTHER ORDERED that these items of security, described in paragraph 12 above, may be sold individually or as a whole at public sale or private sale by or under the direction of the United States Marshal or Farm Service Agency.

15. IT IS FURTHER ORDERED that if these items of security, described in paragraph 12 above, are sold, the United States shall deposit the proceeds thereof, after deducting the costs and expenses of the sale, and unless otherwise ordered by the Court, the United States shall thereupon pay from the proceeds of said sale all claims

superior to Plaintiff as determined by the Court and to Plaintiff to the sums set forth in Paragraph 12, the amount of said judgment, together with interest on all of said sums at the rate of set forth in 28 U.S.C. § 1961(a) from the date hereof, or so much thereof as the monies derived from the sale of said items of security will pay the same, and take receipts therefor; that the surplus money, if any, shall be subject to the further order of the Court.

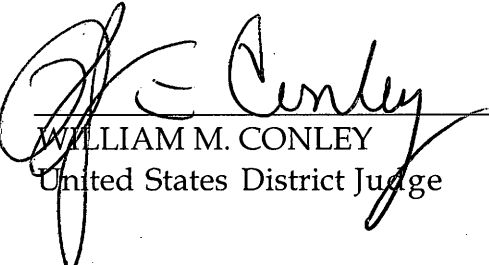
16. IT IS FURTHER ORDERED that if the proceeds from the sale of the items of security, together with the proceeds from the sale of the real estate, be insufficient to pay the amounts aforesaid, then the United States may report the amount of the deficiency to the Court. Deficiency judgment is not being sought herein.

17. IT IS FURTHER ORDERED that the Defendants, their heirs, successors or assigns, and all persons claiming under them, be forever barred and foreclosed of all right, title, interest and equity of redemption in said mortgaged collateral.

18. IT IS FURTHER ORDERED that the Defendants and all persons claiming under them be and they are hereby enjoined from doing any act that may impair the value of the mortgaged collateral.

Dated this 8th day of October, 2014.

BY THE COURT:


WILLIAM M. CONLEY
United States District Judge

Entered at Madison, Wisconsin, this 9th day of October, 2014.


PETER OPPENEER
Clerk of Court

UNITED STATES V. BRIAN DUERST, et al.

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ATTACHMENT A

Notes and Mortgages

a.	Principal as of October 8, 2014	\$ 379,990.63
b.	Interest as of October 8, 2014	\$ <u>70,328.06</u>
	Total as of October 8, 2014	\$ <u>450,318.69</u>

Court Costs and Disbursements

c.	United States Marshals Fees	\$ 163.60
d.	Filing of Notice of Lis Pendens	\$ <u>30.00</u>
	Total Costs & Disbursements	\$ <u>193.60</u>

TOTAL AS OF OCTOBER 8, 2014 \$ **450,512.29**

ATTACHMENT B
 UNITED STATES OF AMERICA V. BRIAN K. DUERST, et al.
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LIST OF ITEMS OF SECURITY

A. All crops, annual and perennial, and other plant or farm products now planted, growing or grown, or harvested or which are planted after this instrument is signed or otherwise become growing or harvested crops or other plant products (a) within the one-year period or any longer period of years permissible under State law, or (b) at any time after this instrument is signed if no fixed maximum period is prescribed by State law, including the crops and plant products now planted, to be planted, growing or grown or harvested on the following described real estate:

ITEM NO.	NO. OF ACRES	OWNER	LOCATION	DESCRIPTION
1	50	Brian K. Duerst	Green, Wisconsin	All crops and plant products wherever grown on property

B. All farm and other equipment (except small tools and small equipment such as hand tools, power lawn mowers and other items of like type unless described below), and inventory, now owned or hereafter acquired by Debtor, together with all replacements, substitutions, additions, and accessions thereto, including but not limited to the following:

ITEM NO.	QTY	DESCRIPTION	MANUFACTURER	SIZE AND TYPE	SERIAL OR MODEL NO.
1	1	Haybine	New Holland	489 9'	
2	1	Tractor	AC	Two-Ten	1505D
3	1	Tractor	AC w/ AC 500 loader	D-17 Series IV	78863
4	1	Tractor	AC	D19	12391
5	1	Tractor	AC	170 2WD	9345
6	1	Manure Spreader	New Idea	3622	

7	1	Silo Blower	Gehl	99	
8	2	Chopper Box	Gehl	920/940	
9	1	Chopper	Gehl	600	
10	1	Small Sq. Baler	New Holland w/ thrower	282	93024
11	1	Corn Planter	AC	330	2571

C. All livestock (except livestock and poultry kept primarily for subsistence purposes), fish, bees, birds, furbearing animals, other animals produced or used for commercial purposes, other farm products, and supplies, now owned or hereafter acquired by Defendant Brian Duerst, together with all increases, replacements, substitutions, and additions thereto, including but not limited to the following:

ITEM NO.	QTY	DESCRIPTION	BREED	COLOR
1	8	Dairy Cattle - Calves - Heifer	Holstein	Black/White
2	3	Dairy Cattle - Brdg. - Bulls	Holstein	Black/White
3	54	Dairy Cattle - Brdg. - Cows	Holstein	Black/White
4	10	Dairy Cattle - Brdg. - Heifers - Bred	Holstein	Black/White
5	6	Dairy Cattle - Brdg. - Heifers - Open	Holstein	Black/White