

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. RE-06-76

NORTHEAST BANK,

Plaintiff

v.

JUDGMENT

DIRIGO HOUSING
ASSOCIATES, INC.,
et al,

Defendants

DONALD L. GARBRECHT
LAW LIBRARY

JUL 18 2008

In its complaint, the plaintiff Northeast Bank (Bank) seeks to foreclose on property on Leighton Road in Augusta, Maine. All parties consent to judgment except the defendant The Leighton Road Revocable Trust of 2003 (Trust).

The Bank's exhibits 1 through 14 and the Trust's exhibit 1 were admitted without objection. These exhibits provide the history of this controversy:

The Bank's exhibit

1: is a note dated 7/10/03 from Dirigo Housing Associates (Dirigo) to the Bank in the amount of \$87,000.00;

2: is a note dated 7/10/03 from the Trust to Dirigo in the amount of \$87,000.00;

3: is a mortgage dated 7/10/03 from the Trust to Dirigo to secure the note from the Trust to Dirigo;

4: is a collateral assignment of the mortgage from the Trust to Dirigo by Dirigo to the Bank to secure the note from Dirigo to the Bank;

5: is a letter dated 3/17/03 from the office of James Mitchell, Trustee of the Trust, to the Bank, which included a partial release of the assignment of the mortgage from Dirigo;

6: is the Bank's internal memo dated 4/11/05; the memo provides that the plan is to sell twelve acres of the mortgaged premises;

7: is a letter dated 3/18/05 to the Mitchell office from the Bank, which included a partial release to be held until closing;

8: is a letter dated 3/25/05 to the Bank from the Mitchell office, which included a check payable to the Bank for \$87,250.63;

9: is a copy of the \$87,250.63 check from the Trust to the Bank;

10: is a copy of a check from the Bank to the Primes, the Trust beneficiaries, and Dirigo in the amount of \$87,250.63;

11: is the Bank's internal memo dated 8/9/05, which describes a conversation between Gene McKenna of the Bank and the Trustee;

12: is an internal memo of the Bank dated 7/11/06, which provides that an employee of the Bank is working with the trustee to rewrite to the Trust a loan to Dirigo;

13: is a demand letter dated 3/3/06 from the Bank to Dirigo, which provides that the loans are in default;

14: is a copy of checks dated 7/10/03, the date of the closing on the loan from the Bank to Dirigo, from the Bank to various entities.

The Trust's exhibit 1 is an allonge dated 4/19/05 to the note between Dirigo and the Bank, which extended the note's maturity date to 7/10/06.

The court has considered the exhibits and the testimony of Trustee Mitchell, the sole testimony presented. The issue is what was intended when the Trust paid \$87,250.63 to the Bank. (Pl.'s Exs. 8, 9.)

In 2003, the Trust borrowed \$87,000.00 from Dirigo to avoid a foreclosure action by Kennebec Savings Bank. At the time the twelve acres were sold, the Bank sent to the Trust a partial release and a payoff figure as of 3/18/05 with per diem interest. Seven days later, on 3/25/05, the Trust sent to the Bank a check for the amount of the payoff figure plus seven days of the per diem interest. (Pl.'s Exs. 5, 7-9.) The partial release was recorded by the Trustee. No request for a full discharge was made to the Bank.

On 4/14/05, the Bank paid the beneficiaries of the Trust \$87,250.63. (Pl.'s Ex. 10.) The Trust owned the real estate and the Trustee signed no documents to authorize release of \$87,250.63 to the Primes or Dirigo. The Trustee became aware of that payment during the current litigation. The Trustee was the only person authorized to handle real estate transactions for the Trust. Neither he nor the beneficiaries signed the allonge to the Bank-Dirigo note. (Def.'s Ex. 1.) The Trustee became aware of the allonge during the current litigation. The Trustee intended the \$87,250.63 as payoff for its mortgage.

Based on the record at trial, the court concludes that the Trust intended to pay the amount due on the note, as provided by the Bank, when the Trust's check was tendered. (Pl.'s Exs. 1, 2, 7, 8, 9.) That payment discharged the mortgage. See St. Agatha Federal Credit Union v. Ouellette, 1998 ME 279, ¶10, 722 A.2d 858, 861.

The entry is

Judgment is entered in favor of The Leighton Road Revocable Trust of 2003 and against the Plaintiff on Counts I and II of the Plaintiff's Complaint.

Judgment is entered in favor of Dirigo Housing Associates and against The Leighton Revocable Trust of 2003 on its Cross-Claim.

Counsel for the Plaintiff will prepare a Consent Judgment with regard to the Plaintiff's Claims against the remaining parties.

Date: June 18, 2008

A handwritten signature in black ink, appearing to read "Nancy Mills", written over a horizontal line.

Nancy Mills
Justice, Superior Court

NORTHEAST BANK - PLAINTIFF

Attorney for: NORTHEAST BANK
BRUCE HOCHMAN - RETAINED 10/18/2006
LAMBERT COFFIN RUDMAN HOCHMAN
477 CONGRESS STREET 14TH FLOOR
PO BOX 15215
PORTLAND ME 04112-5215

SUPERIOR COURT
KENNEBEC, ss.
Docket No AUGSC-RE-2006-00076

DOCKET RECORD

vs

DIRIGO HOUSING ASSOCIATES INC. - DEFENDANT

Attorney for: DIRIGO HOUSING ASSOCIATES INC.
DONALD J GASINK - RETAINED
LAW OFFICES OF DONALD J GASINK
82 WINTHROP STREET

AUGUSTA ME 04330

THE LEIGHTON ROAD REVOCABLE TRUST OF 2003 - DEFENDANT

86 WINTHROP ST
AUGUSTA ME 04330
Attorney for: THE LEIGHTON ROAD REVOCABLE TRUST
OF 2003
MATTHEW E CLARK - RETAINED
WEEKS & HUTCHINS
TWO PARK PLACE
PO BOX 417
WATERVILLE ME 04903-0417

THE ESTATE OF ROBERT TISDALE - DEFENDANT

PO BOX 756
GARDINER ME 04345
Attorney for: THE ESTATE OF ROBERT TISDALE
MATTHEW E CLARK - RETAINED
WEEKS & HUTCHINS
TWO PARK PLACE
PO BOX 417
WATERVILLE ME 04903-0417

MAVOUREEN M TORNESELLO - PARTIES IN INTEREST

Attorney for: MAVOUREEN M TORNESELLO
DANIEL STEVENS - RETAINED
PIERCE ATWOOD
77 WINTHROP STREET
AUGUSTA ME 04330-5552

MICHAEL P TORNESELLO - PARTIES IN INTEREST

Attorney for: MICHAEL P TORNESELLO
DANIEL STEVENS - RETAINED
PIERCE ATWOOD
77 WINTHROP STREET
AUGUSTA ME 04330-5552

12/18/2006 Party(s): THE LEIGHTON ROAD REVOCABLE TRUST OF 2003,THE ESTATE OF ROBERT TISDALE,DEBRA A TISDALE
OTHER FILING - ENTRY OF APPEARANCE FILED ON 12/18/2006

12/19/2006 Party(s): THE LEIGHTON ROAD REVOCABLE TRUST OF 2003
ATTORNEY - RETAINED ENTERED ON 12/18/2006
Defendant's Attorney: MATTHEW E CLARK

12/19/2006 Party(s): DEBRA A TISDALE
ATTORNEY - RETAINED ENTERED ON 12/18/2006

12/19/2006 Party(s): THE ESTATE OF ROBERT TISDALE
ATTORNEY - RETAINED ENTERED ON 12/18/2006
Defendant's Attorney: MATTHEW E CLARK

12/19/2006 Party(s): THE LEIGHTON ROAD REVOCABLE TRUST OF 2003,THE ESTATE OF ROBERT TISDALE,DEBRA A TISDALE
RESPONSIVE PLEADING - ANSWER AND CROSSCLAIM FILED ON 12/18/2006
ANSWER TO COMPLAINT OF FORECLOSURE AND CROSS CLAIM OF DEFTS THE LEIGHTON ROAD REVOCABLE TRUST OF 2003 AND DEBRA TISDALE, PR OF THE ESTATE OF ROBERT A. TISDALE, JR.

01/03/2007 Party(s): DIRIGO HOUSING ASSOCIATES INC.
RESPONSIVE PLEADING - ANSWER TO CROSSCLAIM FILED ON 01/03/2007
Defendant's Attorney: DONALD J GASINK

01/03/2007 Party(s): DIRIGO HOUSING ASSOCIATES INC.
ATTORNEY - RETAINED ENTERED ON 01/03/2007
Defendant's Attorney: DONALD J GASINK

01/04/2007 ORDER - SCHEDULING ORDER ENTERED ON 01/04/2007
S KIRK STUDSTRUP , JUSTICE
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. COPIES TO PARTIES/COUNSEL

01/04/2007 DISCOVERY FILING - DISCOVERY DEADLINE ENTERED ON 09/04/2007

01/04/2007 ASSIGNMENT - SINGLE JUDGE/JUSTICE ASSIGNED TO JUSTICE ON 01/04/2007
S KIRK STUDSTRUP , JUSTICE

01/11/2007 Party(s): THE LEIGHTON ROAD REVOCABLE TRUST OF 2003
DISCOVERY FILING - NOTIFICATION DISCOVERY SERVICE FILED ON 01/11/2007
Defendant's Attorney: MATTHEW E CLARK
INTERROGATORIES PROPOUNDED TO NORTHEAST BANK; REQUEST FOR PRODUCTION OF DOCUMENTS BY NORTHEAST BANK, SERVED ON PLAINTIFF ON 01/10/07.

02/16/2007 Party(s): NORTHEAST BANK
DISCOVERY FILING - NOTIFICATION DISCOVERY SERVICE FILED ON 02/16/2007
Plaintiff's Attorney: BRUCE HOCHMAN
RESPONSE TO DEFT'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS; RESPONSE TO DEFT'S INTERROGATORIES, SERVED ON M. CLARK, ESQ. ON 02/12/07.

05/18/2007 Party(s): NORTHEAST BANK

MOTION - MOTION SUMMARY JUDGMENT FILED WITH AFFIDAVIT ON 05/17/2007

Plaintiff's Attorney: BRUCE HOCHMAN

STATEMENT OF MATERIAL FACTS IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT,
AFFIDAVIT OF MARILYN H. THOMAS IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT WITH
ATTACHED EXHIBITS A-G, AFFIDAVIT OF BRUCE B HOCHMAN AND PROPOSED ORDER.

06/04/2007 Party(s): DIRIGO HOUSING ASSOCIATES INC.,THE LEIGHTON ROAD REVOCABLE TRUST OF 2003,THE ESTATE
OF ROBERT TISDALE

MOTION - MOTION FOR ENLARGEMENT OF TIME FILED ON 06/04/2007

TO REPLY TO DEFENDANTS MOTION FOR SUMMARY JUDGEMENT WITH PROPOSED ORDER.

06/08/2007 Party(s): DIRIGO HOUSING ASSOCIATES INC.,THE LEIGHTON ROAD REVOCABLE TRUST OF 2003,THE ESTATE
OF ROBERT TISDALE

MOTION - MOTION FOR ENLARGEMENT OF TIME GRANTED ON 06/07/2007

S KIRK STUDSTRUP , JUSTICE

COPIES TO PARTIES/COUNSEL

06/20/2007 Party(s): DIRIGO HOUSING ASSOCIATES INC.,THE LEIGHTON ROAD REVOCABLE TRUST OF 2003,THE ESTATE
OF ROBERT TISDALE

MOTION - MOTION FOR ENLARGEMENT OF TIME FILED ON 06/20/2007

SECOND UNOPPOSED MOTION FOR EXTENSION OF TIME FOR DEFENDANTS TO REPLY TO MOTION FOR
SUMMARY JUDGMENT WITH PROPOSED ORDER.

06/30/2007 Party(s): DIRIGO HOUSING ASSOCIATES INC.,THE LEIGHTON ROAD REVOCABLE TRUST OF 2003,THE ESTATE
OF ROBERT TISDALE

MOTION - MOTION FOR ENLARGEMENT OF TIME GRANTED ON 06/28/2007

S KIRK STUDSTRUP , JUSTICE

COPIES TO PARTIES/COUNSEL

30 DAY

EXTENSION TO REPLY TO SUMMARY JUDGMENT.

07/10/2007 Party(s): MAVOUREEN M TORNESELLO,MICHAEL P TORNESELLO

OTHER FILING - ENTRY OF APPEARANCE FILED ON 07/09/2007

07/10/2007 Party(s): MAVOUREEN M TORNESELLO

SUMMONS/SERVICE - ACCEPTANCE OF SERVICE SERVED ON 07/06/2007

FOR PARTY-IN-INTEREST, MAVOURNEED TORNESELLO

07/10/2007 Party(s): MICHAEL P TORNESELLO

SUMMONS/SERVICE - ACCEPTANCE OF SERVICE SERVED ON 07/06/2007

FOR PARTY-IN-INTEREST, MICHAEL TORNESELLO

07/10/2007 Party(s): MAVOUREEN M TORNESELLO,MICHAEL P TORNESELLO

RESPONSIVE PLEADING - ANSWER FILED ON 07/09/2007

07/25/2007 Party(s): THE LEIGHTON ROAD REVOCABLE TRUST OF 2003,THE ESTATE OF ROBERT TISDALE,DEBRA A
TISDALE

MOTION - MOTION FOR ENLARGEMENT OF TIME FILED ON 07/20/2007

THIRD UNOPPOSED MOTION FOR EXTENSION OF TIME

08/08/2007 Party(s): THE LEIGHTON ROAD REVOCABLE TRUST OF 2003,THE ESTATE OF ROBERT TISDALE,DEBRA A
TISDALE

MOTION - MOTION FOR ENLARGEMENT OF TIME GRANTED ON 08/06/2007

S KIRK STUDSTRUP , JUSTICE

COPIES TO PARTIES/COUNSEL
WITHOUT OPPOSITION DEFENDANT'S LEIGHTON ROAD TRUST AND DEBRA TISDALE AS PERSONAL
REPRESENTATIVE OF THE ESTATE OF ROBERT A TISDALE, JR. ARE GRANTED THE NINETY-DAY (90 DAY)
EXTENSION TO RESPOND TO THE MOTION FOR SUMMARY JUDGMENT. UPON MOTION AND

11/01/2007 TRIAL - TRAILING LIST SCHEDULED FOR 11/06/2007

11/09/2007 TRIAL - TRAILING LIST CONTINUED ON 11/09/2007
DEFT DIRIGO HOUSING FILED FOR BANKRUPTCY

11/16/2007 Party(s): DIRIGO HOUSING ASSOCIATES INC.
OTHER FILING - SUGGESTION OF BANKRUPTCY FILED ON 11/15/2007
Defendant's Attorney: DONALD J GASINK

12/21/2007 ASSIGNMENT - SINGLE JUDGE/JUSTICE ASSIGNED TO JUSTICE ON 12/21/2007
NANCY MILLS , JUSTICE

12/21/2007 Party(s): NORTHEAST BANK
OTHER FILING - OTHER DOCUMENT FILED ON 12/20/2007
Plaintiff's Attorney: BRUCE HOCHMAN
ORDER ON MOTION FOR RELIEF FROM THE AUTOMATIC STAY (COPY)

01/15/2008 Party(s): THE LEIGHTON ROAD REVOCABLE TRUST OF 2003,DEBRA A TISDALE
OTHER FILING - REPLY MEMORANDUM FILED ON 01/09/2007
DEFTS' REPLY TO PLTF'S STATEMENT OF MATERIAL FACTS W/ ADDITIONAL FACTS

01/15/2008 Party(s): THE LEIGHTON ROAD REVOCABLE TRUST OF 2003,DEBRA A TISDALE
OTHER FILING - OPPOSING MEMORANDUM FILED ON 01/09/2008
DEFTS' OPPOSITION TO PLTF'S MOTION FOR SUMMARY JUDGMENT W/ INCORPORATED MEMORANDUM OF LAW

01/15/2008 Party(s): THE LEIGHTON ROAD REVOCABLE TRUST OF 2003
OTHER FILING - AFFIDAVIT FILED ON 01/09/2008
Defendant's Attorney: MATTHEW E CLARK
AFFIDAVIT OF JAMES E. MITCHELL, W/ EXHIBITS A-L

01/15/2008 Party(s): DIRIGO HOUSING ASSOCIATES INC.
LETTER - FROM PARTY FILED ON 01/10/2008
Defendant's Attorney: DONALD J GASINK
WILL NOT BE PARTICIPATING IN TMC AS CLIENT HAS FILED BANKRUPTCY

01/16/2008 Party(s): NORTHEAST BANK
LETTER - FROM PARTY FILED ON 01/16/2008
Plaintiff's Attorney: BRUCE HOCHMAN
COPY OF LETTER TO ATTY CLARK

01/18/2008 Party(s): DIRIGO HOUSING ASSOCIATES INC.
LETTER - FROM PARTY FILED ON 01/18/2008
Defendant's Attorney: DONALD J GASINK
CLARIFYING POSITION OF DIRIGO HOUSING ASSOC RE: BANKRUPTCY.

02/07/2008 ORDER - CONFERENCE REPORT & ORDER ENTERED ON 02/05/2008
NANCY MILLS , JUSTICE
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. COPY TO

PARTIES/COUNSEL

02/08/2008 TRIAL - BENCH SCHEDULED FOR 03/13/2008 @ 1:00

02/14/2008 Party(s): NORTHEAST BANK
OTHER FILING - REPLY MEMORANDUM FILED ON 02/08/2008
Plaintiff's Attorney: BRUCE HOCHMAN
NORTHEAST BANK'S REPLY TO THE DEFTS' OPPOSITION TO THE MOTION FOR SUMMARY JUDGMENT;
RESPONSE TO THE DEFTS' STATEMENT OF MATERIAL FACTS WITH ADDITIONAL FACTS; SUPPLEMENTAL
AFFIDAVIT OF MARILYN H. THOMAS.

02/14/2008 Party(s): THE LEIGHTON ROAD REVOCABLE TRUST OF 2003
OTHER FILING - WITNESS LIST FILED ON 02/11/2008
Defendant's Attorney: MATTHEW E CLARK

02/14/2008 Party(s): NORTHEAST BANK
OTHER FILING - WITNESS LIST FILED ON 02/14/2008
Plaintiff's Attorney: BRUCE HOCHMAN

02/20/2008 Party(s): NORTHEAST BANK
OTHER FILING - REPLY MEMORANDUM FILED ON 02/15/2008
Plaintiff's Attorney: MATTHEW E CLARK
MEMORANDUM

02/20/2008 Party(s): NORTHEAST BANK
OTHER FILING - AFFIDAVIT FILED ON 02/15/2008
Plaintiff's Attorney: BRUCE HOCHMAN
SUPPLEMENTAL AFFIDAVIT OF MARILYN H. THOMAS IN SUPPORT OF PLTF'S REPLY TO THE OPPOSITION
TO ITS MOTION FOR SUMMARY JUDGMENT

03/21/2008 TRIAL - BENCH HELD ON 03/13/2008
NANCY MILLS , JUSTICE
TAPE 770 INDEX 1386-6961, 771 INDEX 0001-210 BRUCE HOCHMAN,
ESQ. FOR THE PLAINTIFF AND MATTHEW CLARK, ESQ. FOR THE DEFENDANT. PLAINTIFF CALLS JAMES
MITCHELL AS A WITNESS. CLOSING STATEMENTS MADE TO THE COURT. COURT TO TAKE MATTER UNDER
ADVISEMENT.

03/21/2008 TRIAL - TRAILING LIST HELD ON 03/13/2008

03/21/2008 Party(s): NORTHEAST BANK
MOTION - MOTION SUMMARY JUDGMENT UNDER ADVISEMENT ON 03/13/2008
NANCY MILLS , JUSTICE

06/30/2008 FINDING - JUDGMENT DETERMINATION ENTERED ON 06/18/2008
NANCY MILLS , JUSTICE
IN FAVOR OF THE LEIGHTON ROAD REVOCABLE TRUST OF 2003 AND AGAINST THE PLAINTIFF ON COUNTS
I AND II OF THE PLAINTIFF'S COMPLAINT.
IN FAVOR OF DIRIDO HOUSING ASSOCIATES AND
AGAINST THE LEIGHTON REVOCABLE TRUST OF 2003 ON ITS CROSS-CLAIM.

COUNSEL FOR PLTF WILL PREPARE A CONSENT JUDGMENT

ORDER - COURT JUDGMENT ENTERED ON 06/18/2008

NANCY MILLS , JUSTICE

IN FAVOR OF THE LEIGHTON ROAD REVOCABLE TRUST OF 2003 AND AGAINST THE PLAINTIFF ON COUNTS
I AND II OF THE PLAINTIFF'S COMPLAINT.

IN FAVOR OF DIRIGO HOUSING ASSOCIATES AND
AGAINST THE LEIGHTON REVOCABLE TRUST OF 2003 ON ITS CROSS-CLAIM.

(SEE NOTE) COUNSEL FOR THE PLAINTIFF WILL PREPARE A CONSENT JUDGMENT WITH REGARD TO THE
PLAINTIFF'S CLAIMS AGAINST THE REMAINING PARTIES.

Judgment entered on COUNT 1 for THE LEIGHTON ROAD REVOCABLE TRUST OF 2003 and against NORTHEAST
BANK.

Judgment entered on COUNT 2 for THE LEIGHTON ROAD REVOCABLE TRUST OF 2003 and against NORTHEAST
BANK.

06/30/2008 FINDING - FINAL JUDGMENT CASE CLOSED ON 06/30/2008

06/30/2008 NOTE - OTHER CASE NOTE ENTERED ON 06/30/2008

COPY OF JUDGMENT TO DEBORAH FIRESTONE, GARBRECHT LAW LIBRARY, DONALD GOSS.

A TRUE COPY

ATTEST: _____

Clerk