

IN THE CIRCUIT COURT OF BENTON COUNTY, ARKANSAS
SIXTH DIVISION

PINNACLE POINT PROPERTIES, LLC;
STONEBROOK CREEKS, LLC;
PINNACLE POINT HOLDINGS, LLC;
PINNACLE POINT, LLC; PINNACLE POINT
PARTNERS, LLC; OSAGE PARTNERS, LLC;
PINNACLE POINT PLAZA, LLC; HART &
HAYNES, LLC; BILL W. SCHWYHART;
CAROLYN SCHWYHART; ROBERT B.
THORNTON; and FRIEDA V. THORNTON

LENDER LIABILITY PLAINTIFFS /
FORECLOSURE DEFENDANTS

vs.

Case No. CV 2009-3666-6

METROPOLITAN NATIONAL BANK

LENDER LIABILITY DEFENDANT /
FORECLOSURE PLAINTIFF

vs.

CHAMBERS BANK

FORECLOSURE NOTICE DEFENDANT

vs.

J.B. HUNT, LLC; TIMOTHY GRAHAM;
and BEVERLY S. GRAHAM

THIRD-PARTY DEFENDANTS

JUDGMENT AND FORECLOSURE DECREE

On September 7-8, 2010, the Court conducted a bench trial on the foreclosure complaint and amended foreclosure complaint filed by Metropolitan National Bank against Pinnacle Point Properties, LLC; Stoneybrook Creeks, LLC; Pinnacle Point Holdings, LLC; Pinnacle Point, LLC; Pinnacle Point Partners, LLC; Osage Partners, LLC; Pinnacle Point Plaza, LLC; Hart & Haynes, LLC; Bill W. Schwyhart; Carolyn Schwyhart; Robert B. Thornton; Frieda V. Thornton; and Chambers Bank (collectively the "Foreclosure Defendants").

Metropolitan National Bank ("MNB") appeared by and through its counsel, Jess Askew III and Andrew King of Williams & Anderson PLC, and presented evidence. Pinnacle Point Properties, LLC; Stoneybrook Creeks, LLC; Pinnacle Point Holdings, LLC; Pinnacle Point, LLC; Pinnacle Point Partners, LLC; Osage Partners, LLC; Pinnacle Point Plaza, LLC; Hart & Haynes, LLC; Bill W. Schwyhart; Carolyn Schwyhart; Robert B. Thornton; and Frieda V. Thornton appeared by and through their counsel, Robert Rhoads and Scott Hall of Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C., and presented evidence. Chambers Bank appeared by and through its counsel, Jason Bramlett of Friday, Eldredge & Clark LLP.

Upon consideration of the testimony, evidence, credibility of the witnesses, and arguments of counsel, as well as Court's Order of July 12, 2010, finding that certain facts exist without substantial controversy and are deemed established for trial, the Court finds that Metropolitan National Bank has proven its case and damages on its foreclosure complaint and amended foreclosure complaint by a preponderance of the evidence. MNB is entitled to a judgment against the Foreclosure Defendants as follows:

IT IS THEREFORE CONSIDERED, ORDERED, AND ADJUDGED:

1. The Court has jurisdiction over the parties to this action and the subject matter of this action.
2. Venue is proper in Benton County, Arkansas.
3. Each party sued in this matter has been duly served with a summons in the time and manner prescribed by law.

Receivership

4. The Receivership of Dewitt Smith shall remain in place until the Court enters an order confirming the sale or sales of the real and personal property subject to MNB's Mortgage and Security Agreements.

5. In the event that Mr. Smith resigns, the Court Appoints Kristen Boozman as Receiver for the duration of the Receivership. The appointment of Ms. Boozman as Receiver shall be on the same terms as set forth in the Court's Order Appointing Receiver entered on January 20, 2010 and shall be effective upon Ms. Boozman's written acceptance and oath to faithfully perform the duties reposed in her by the Court.

6. The Court waives the requirement of further bond for Ms. Boozman's appointment as Receiver; the bond posted for Mr. Smith shall remain in place to ensure the performance of Ms. Boozman's duties.

7. Upon the entry of an order confirming the sale of all real and personal property subject to MNB's Mortgage and Security Agreements, the Receivership shall terminate and the Receiver shall turn all money in its possession as Receiver over to MNB.

8. Upon the termination of the Receivership, the Circuit Clerk shall return the Receiver's bond to MNB.

Foreclosure Judgment

9. True and correct copies of the Mortgage and Security Agreements that the foreclosure defendants conveyed to MNB are filed in the real property records of Benton County Arkansas and are attached to MNB's foreclosure complaint as Exhibits A, B, C, D, E, F, and G, as follows:

Exhibit	Mortgagor/ Foreclosure Defendant	Mortgage Book, Pages	Pinnacle Point Building(s)
A	Stoneybrook Creeks, LLC	2003, 159027-159058	Buildings I, J, and K
B	Pinnacle Point Holdings, LLC	2003, 159187-159218	Building M
C	Pinnacle Point, LLC	2003, 159155-159186	Tower I, Market Building
D	Pinnacle Point Partners, LLC	2003, 159223-159254	Building B
E	Osage Partners, LLC	2003, 159123-159154	Building H
F	Pinnacle Point Plaza, LLC	2003, 159059-159090	Building N
G	Hart & Haynes, LLC	2003, 159091-159122	Tower II

10. The Mortgage and Security Agreements secure the payment and performance of a promissory note in the original principal sum of \$34,649,624.26 (the "Note"), a true and correct copy of which is attached to MNB's foreclosure complaint as Exhibit P. In the Mortgage and Security Agreements, the foreclosure defendants waived all rights to redemption and marshalling of assets.

11. The Chambers mortgages and assignments of rents and leases are junior in priority and inferior to the interests of MNB and may be foreclosed in this action.

12. There is now owing on the Note \$34,352,298.25 in principal, \$3,287,317.65 in interest, \$16,144.07 in late fees, \$8,000.00 in appraisal fees, \$865.00 in taxable costs, and \$259,894.15 in attorneys' fees on the Note, for a total of **\$37,924,519.12**.

13. Under the Court's Oder Appointing Receiver entered January 20, 2010, any money that MNB advances to the Receiver is entitled to a super priority over all other liens, encumbrances, debts, costs, and obligations. Those amounts shall be first deducted and paid

at the time of a foreclosure sale. MNB has advanced a total of **\$1,014,201.44** under the Order Appointing Receiver and is entitled to a super-priority lien in that amount.

14. MNB shall have and recover a judgment against the foreclosure defendants Pinnacle Point Properties, LLC; Stoneybrook Creeks, LLC; Pinnacle Point Holdings, LLC; Pinnacle Point, LLC; Pinnacle Point Partners, LLC; Osage Partners, LLC; Pinnacle Point Plaza, LLC; Hart & Haynes, LLC; Bill W. Schwyhart; Carolyn Schwyhart; Robert B. Thornton; and Frieda V. Thornton, jointly and severally, in the amount of **\$38,938,720.56**, with continuing interest in the amount of 5.5% per annum from the entry of judgment until paid. The Court finds that the Federal Reserve Discount Rate at the time of the Note was 0.5%; therefore, the applicable post-judgment interest rate is 5.5% under Arkansas law.

15. Pursuant to Ark. Code Ann. § 16-66-221, each of the foreclosure defendants shall prepare and file herein, verified by affidavit, all of its property, both real and personal, including moneys, bank accounts, rights, credits and choses in action held by it or others for it and specify the particular property which it claims as exempt under the provisions of the law. The schedule shall be filed with the clerk of the court within forty-five (45) days of entry of this Judgment and Foreclosure Decree.

16. This judgment is a first and exclusive lien upon the real property described in Exhibit A attached hereto, and all personal property of the mortgagors located upon, within, or about that real property, prior and paramount to the claims and liens of all parties whomsoever, including specifically all rights of dower, curtesy, homestead and redemption (collectively, the "Property"). A legal description of the Property is attached to this Judgment and Foreclosure Decree as Exhibit A.

17. If the foregoing judgment is not satisfied within ten (10) days from the entry of this Judgment and Foreclosure Decree, the Commissioner of this Court, hereinafter named, shall sell the Property at foreclosure sale at the front door of the Courthouse of Benton County, Arkansas, 102 N.E. "A" Street, Bentonville, Arkansas 72712, according to the format hereinafter described, at a public venue, on a credit of three months. The proceeds of such sale shall be applied first to the payment of any amount owed to the Benton County Tax Collector, then to the payment of the amount of the judgment awarded to MNB, including the costs and attorneys' fees awarded to MNB, with the balance, if any, paid into the registry of the Court and distributed pursuant to further order of this Court.

Foreclosure Sale

18. Brenda DeShields, the Circuit Clerk of Benton County, is hereby appointed Commissioner for the purpose of executing this Judgment and Foreclosure Decree.

19. The foreclosure sale shall be held between the hours of 10:00 a.m. and 2:00 p.m. upon a date to be selected by the Commissioner. The Commissioner shall advertise the sale (such advertisement to reflect the time, terms and place of sale) for ten (10) days by one (1) insertion of the notice in a newspaper published and having a bona fide circulation in Benton County, Arkansas, and by posting printed notice at the front door of the Benton County Courthouse.

20. If MNB shall become the purchaser at such sale or sales, MNB shall be entitled to credit its judgment in this action against the purchase price.

21. The purchaser at any such sale or sales shall execute a bond or letter of credit in an amount equal to 10% of the purchase price, bearing interest at the rate of 7% per annum from the date of said sale until paid, with surety to be approved by the Commissioner, and a

lien shall be retained secure the payment of such bond. If the purchaser does not pay the purchase price within three (3) months of the sale date, the bond shall be forfeited and distributed as proceeds of the sale. Should a purchaser does fail pay the purchase price within three months, the affected property immediately will be scheduled for a second foreclosure sale. However, if MNB shall purchase the Property, it shall make bond only for such sum as may represent the excess of its bid over the amount of judgment herein awarded.

22. Said sale or sales shall constitute a perpetual bar to all rights of redemption, and all right, title, claim and interest of all parties to this action, including particularly all rights of dower, curtesy, homestead and redemption.

23. Upon notice given to the Clerk of the Court of the occupancy or possession of the Property by any of the foreclosure defendants (or their heirs, successors, assigns, or licensees) by the foreclosure purchaser (or such purchaser's attorney) showing that the possession of the Property has been withheld from such purchaser by an party to this action (or their heirs, successors, assigns, or licensees), the Clerk shall issue and deliver to the Sheriff of Benton County a writ of assistance directing the Sheriff to place such purchaser (or the purchaser's grantee) in immediate possession.

IT IS SO ORDERED this 7th day of September, 2010.


 HON. DOUGLAS SCHRANTZ
 CIRCUIT JUDGE

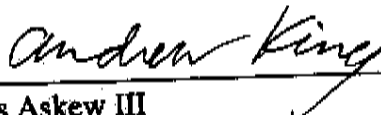
NORTH 89 DEGREES 06 MINUTES 42 SECONDS EAST 364.62 FEET; THENCE ALONG THE WESTERLY RIGHT OF WAY OF INTERSTATE #540 SOUTH 07 DEGREES 41 MINUTES 03 SECONDS WEST 84.54 FEET; THENCE SOUTH 29 DEGREES 52 MINUTES 47 SECONDS WEST 103.31 FEET; THENCE SOUTH 56 DEGREES 49 MINUTES 17 SECONDS WEST 138.48 FEET; THENCE SOUTH 02 DEGREES 15 MINUTES 30 SECONDS EAST 36.16 FEET; THENCE LEAVING SAID RIGHT OF WAY AND ALONG THE SOUTH LINE OF THE NW 1/4 OF THE NW 1/4, SOUTH 89 DEGREES 39 MINUTES 43 SECONDS WEST 162.11 FEET TO THE TRUE POINT OF BEGINNING, CONTAINING 1.905 ACRES, MORE OR LESS AND BEING SUBJECT TO THE RIGHTS OF WAY OF INTERSTATE HIGHWAY #540 AND CHAMPIONS DRIVE AND ANY EASEMENTS OF RECORD.

TRACT G:

LOT 2"A" OF THE PROPERTY LINE ADJUSTMENT FOR HAYNES LIMITED FOR LOTS 1B, 2, 3 AND 4, PINNACLE POINTE SUBDIVISION, IN ROGERS, BENTON COUNTY, ARKANSAS, AS RECORDED IN PLAT BOOK P3 AT PAGE 297 OF THE RECORDS OF THE BENTON COUNTY, CIRCUIT CLERK.

Prepared by:

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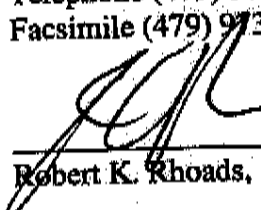
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Address of Foreclosure Defendants (excluding Chambers Bank):

c/o Robert K. Rhoads
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75 N. East Avenue, Suite 401
Fayetteville, Arkansas 72701-5388

EXHIBIT A

LEGAL DESCRIPTION

TRACT A:

ALL OF LOTS 1 AND 2 AND A PART OF COMMON AREA #1 OF THE FINAL PLAT OF PINNACLE POINTE, PHASE 2 IN ROGERS, BENTON COUNTY, ARKANSAS, AS PER THE LOT LINE ADJUSTMENT SURVEY RECORDED IN PLAT BOOK 2003 AT PAGE 450 OF THE RECORDS OF BENTON COUNTY, ARKANSAS.

TRACT B:

ALL OF LOT 36 OF THE PROPERTY LINE ADJUSTMENT OF LOTS 12 THRU 15, PLAT RECORD P4 AT PAGE 799, OF THE FINAL PLAT OF PINNACLE POINTE, PHASE 2, IN ROGERS, BENTON COUNTY, ARKANSAS, AS RECORDED IN THE CIRCUIT CLERK'S OFFICE.

TRACT C:

ALL OF LOTS 5, 6 AND 7 OF THE FINAL PLAT OF PINNACLE POINTE SUBDIVISION IN ROGERS, BENTON COUNTY, ARKANSAS, AS RECORDED IN THE CIRCUIT CLERK'S OFFICE.

TRACT D:

LOT 23A, BEING A REPLAT OF LOTS 23 AND 24, PINNACLE POINTE SUBDIVISION, PHASE 2, ROGERS, BENTON COUNTY, ARKANSAS, AS SHOWN ON THE PROPERTY LINE ADJUSTMENT IN PLAT RECORD P2-719,

TRACT E:

LOT 25A, PINNACLE POINTE SUBDIVISION, PHASE 2, BEING A REPLAT OF LOTS 25, 26 AND 27, ROGERS, BENTON COUNTY, ARKANSAS, AS SHOWN ON THE PROPERTY LINE ADJUSTMENT IN PLAT RECORD 2003 AT PAGE 451.

TRACT F:

LOCATED IN A PART OF THE NW 1/4 OF THE NW 1/4 OF SECTION 21, TOWNSHIP 19 NORTH, RANGE 30 WEST IN ROGERS, BENTON COUNTY, ARKANSAS, MORE PRECISELY DESCRIBED AS FOLLOWS: STARTING AT THE SW CORNER OF THE NW 1/4 OF THE NW 1/4 OF SECTION 21; THENCE NORTH 89 DEGREES 39 MINUTES 43 SECONDS EAST 210.00 FEET; THENCE CONTINUE ALONG THE SAME LINE, NORTH 89 DEGREES 39 MINUTES 43 SECONDS EAST 186.03 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 01 DEGREES 03 MINUTES 54 SECONDS WEST 280.74 FEET; THENCE

NORTH 89 DEGREES 06 MINUTES 42 SECONDS EAST 364.62 FEET; THENCE ALONG THE WESTERLY RIGHT OF WAY OF INTERSTATE #540 SOUTH 07 DEGREES 41 MINUTES 03 SECONDS WEST 84.54 FEET; THENCE SOUTH 29 DEGREES 52 MINUTES 47 SECONDS WEST 103.31 FEET; THENCE SOUTH 56 DEGREES 49 MINUTES 17 SECONDS WEST 138.48 FEET; THENCE SOUTH 02 DEGREES 15 MINUTES 30 SECONDS EAST 36.16 FEET; THENCE LEAVING SAID RIGHT OF WAY AND ALONG THE SOUTH LINE OF THE NW 1/4 OF THE NW 1/4, SOUTH 89 DEGREES 39 MINUTES 43 SECONDS WEST 162.11 FEET TO THE TRUE POINT OF BEGINNING, CONTAINING 1.905 ACRES, MORE OR LESS AND BEING SUBJECT TO THE RIGHTS OF WAY OF INTERSTATE HIGHWAY #540 AND CHAMPIONS DRIVE AND ANY EASEMENTS OF RECORD.

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