

STATE OF VERMONT

SUPERIOR COURT
Rutland Unit

CIVIL DIVISION
Docket No. 24-CV-03966

BANK OF BENNINGTON,
Plaintiff

vs.

ALLEN D. HARBATUK, ADMINISTRATOR
OF THE ESTATE OF RAYMOND F. WATERS;
ALLEN D. HARBATUK; AND All UNNAMED
OCCUPANTS RESIDING AT 209 KELLY HILL ROAD,
DANBY, VERMONT,
Defendants

JUDGMENT AND DECREE OF FORECLOSURE BY JUDICIAL SALE

This foreclosure action was brought before the Court by Complaint of Plaintiff filed October 7, 2024 and served upon Defendants by way of an Acceptance of Service by Nicole Peck McPhee, Esquire as Administrator of the Estate of Raymond F. Waters dated October 7, 2024 and by Acceptance of Service of Christopher Corsones, Esquire, as Attorney for Allen D. Harbatuk dated October 17, 2024. Judgment was granted to Plaintiff by Summary Judgment as against the Defendants filed March 7, 2025. The Accounting was entered on May 28, 2025, without hearing. The requirements of V.R.C.P. 80.1 (g)(2)(A) & (B) have been met, if applicable. Therefore, pursuant to V.R.C.P. 80.1(g) and V.R.C.P. 58,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED as follows:

1. Judgment. There is presently due and owing the principal amount of \$225,535.12, accrued interest of \$17,791.01, late charges of \$1,095.66, court costs of \$339.33, reasonable attorney's fees of \$14,410.50, recording fees for the complaint in the amount of \$135.00; and additional amounts allowed in the accounting of: Appraisal of \$800.00, property preservation of \$457.50; certified mailing of \$34.92; break in insurance coverage of \$45.00; forced placed insurance LNM BIC fee of \$347.54; and title fees of \$300.00 making the total amount due Plaintiff as of May 28, 2025 the sum of \$261,291.58, plus interest accruing at the per diem rate of \$74.96 from May 28, 2025 to the date of redemption.

2. Taxes and Other Advances. Plaintiff is entitled to have any amounts paid for taxes after the date of the affidavit of amounts due added to the amount due at time of redemption, pursuant to 12 V.S.A. § 4935, upon proof of payment made.

3. Mortgaged Property. The property which is the subject of this foreclosure, “Mortgaged Property”, is described as follows:

Being all and the same lands and premises decreed to Raymond F. Waters (now deceased) by Final Decree of Distribution in the Estate of Fred L. Israel dated June 20, 2022, and recorded on July 18, 2022, in Book 112, Page 52 of the Town of Danby Land Records.

Being all and the same lands and premises conveyed to Fred L. Israel by Warranty Deed of Fredric D. Chernin and Ellen Browne dated July 7, 2017 and recorded on July 7, 2017 in Book 102, Page 373 of the Town of Danby Land Records.

Being all the same lands and premises conveyed to Fredric D. Chernin by Warranty Deed of Wendy L. Leffel and James C. Montoro dated September 29, 2000 and recorded in Book 60 at Page 149 of the Danby Land Records and more particularly described therein as follows:

Being all the same lands and premises conveyed to Wendy L. Leffel and James C. Montoro by Warranty Deed of Martin Butler and Jill Roland Butler dated July 14, 1997 and recorded July 14, 1997 in Book 54 at Page 66 of the Town of Danby Land Records. Said lands and premises were more particularly described therein as follows:

Being all the same lands and premises conveyed to Martin Butler and Jill Roland Butler by Warranty Deed of Frances T. Hawkey dated March 16, 1990 and recorded March 21, 1990 in Book 43 at Page 477 of the Town of Danby Land Records.

Being all the same lands and premises conveyed to Frances T. Hawkey by Warranty Deed of G. Michael Hawkey dated December 29, 1989 and recorded in the Land Records of the Town of Danby in Book 43 at Pages 360/2 and more particularly described therein as follows:

Being a portion of the lands and premises conveyed to Grantor by deed of Edgar H. Cleveland and Sally J. Cleveland dated December 6, 1988 and recorded in Book 43 at Pages 192-194 of the Danby Land Records, and this date bounded and described as follows:

PARCEL B: Beginning at an iron pipe recovered set in the southerly line of Town Road #8, said iron pipe is believed to mark the northeast corner of lands of Rose Harber, thence along the Rose Harber the following courses and distances:

S 06° 41' E 106.55 feet, more or less, to a point;
S 07° 10' W 155.65 feet, more or less, to an iron pipe set in a drainage ditch;
S 59° 21' 30" E along the remains of a fence 418.45 feet, more or less, to an iron pipe set;
S 25° 08' 30" E 433.5 feet, more or less, to an iron pipe recovered;
S 52° 09' 30" E 30.0 feet to an iron pipe recovered;
S 80° 07' 30" E 22.7 feet, more or less, to an iron pipe recovered and set in the westerly line of Parcel A described in the above referenced deed of Edgar H. Cleveland and Sally J. Cleveland.

Thence along the westerly line of Parcel A N 19° 13' 45" E 790.33 feet, more or less, to an iron pipe set; thence northerly 25.0 feet to a point in the traveled portion of Town Road #8; thence in the traveled portion of Town Road #8 N 70° 19' W 600.2 feet, more or less, to a

traverse point, thence N 89° 06' W 442.7 feet, more or less, to the point and place of beginning.

Containing 11.87 acres be the same more less.

As to that portion of the premises lying and being within the bounds of Town Road #8 this deed shall operate as a quitclaim deed only and conveys only all of the right, title and interest only of the grantor to the center line of the town road. Meaning to hereby convey by quitclaim all right, title and interest in and to the centerline of the highways.

Excepting and reserving from the operation of this conveyance the rights of the public and others to travel over and across those portions of Parcel B lying within the bounds of the town highway designated as Town Highway #8.

Further excepting and reserving pole line easements of record.

Reference is made to a survey dated October 17, 1988 entitled 'Portion of Cleveland Lands Parcel A and Parcel B, Town Highway #8 and Town Highway #5, Danby, Vermont – Donald S. Lewis registered surveyor dated February 1988 Scale 1" = 100" prepared by Donald S. Lewis and recorded simultaneously with the above-referenced deed.

Reference is also made to the following deeds: Helen L. Cleveland, widow, to Henry G. Smith dated June 26, 1972 and recorded in Book 31 at Page 201; Henry G. Smith to Helen L. Cleveland and Edgar H. Cleveland recorded in Book 31 at Page 199; Helen L. Cleveland to Edgar H. Cleveland dated June 26, 1972 and recorded in Book 31 at Page 200; Helen L. Cleveland to Edgar H. Cleveland dated June 26, 1972 and recorded in Book 31 at Page 202; and Helen L. Cleveland, widow to Henry G. Smith dated June 26, 1972 recorded in Book 31 at page 203; and Quitclaim Deed from Henry G. Smith to Helen L. Cleveland and Edgar H. Cleveland as joint tenants with the right of survivorship and not as tenants in common dated June 26, 1972 recorded in Book 31 at page 204 of the Danby Land Records.

Reference is hereby made to said deed and their records and to all prior deeds and their records for a further and more complete description of the lands and premises. ("Premises")

4. Redemption. It is further ordered that unless Defendant Allen D. Harbatuk, Successor Administrator of the Estate of Raymond F. Waters and Allen D. Harbatuk, Individually, pays to the Clerk of the Court **on or before August 1, 2025, the date of redemption payable to Court, before 4:30 p.m.**, the sum of \$261,291.58, together with any amounts established under paragraph 2 above, and together with per diem interest of \$74.96 from May 28, 2025 to the date of redemption, then the Plaintiff may file a motion for a writ of possession.

5. Defendant's Additional Right to Redeem. Defendant, Allen D. Harbatuk, who acquired the premises on December 14, 2024, subject to the Mortgage, may also redeem up to the date of the judicial sale, described in paragraph 7 below, by payment of the redemption amount

pursuant to 12 V.S.A. § 4949(a), *including the costs and expenses of the sale. If no redemption is made, then such party shall be foreclosed and forever barred from all equity of redemption in the Mortgaged Property.*

6. Non-Redemption; Notice of Sale. If the Defendants shall fail to redeem the Mortgaged Property as set forth in paragraph 4 above, then the Court shall issue a Certificate of Non-Redemption at the Plaintiff's request, and the Mortgaged Property shall be sold as a whole, to the highest bidder at public sale by a sheriff, deputy sheriff, constable, licensed auctioneer, or other disinterested person specifically appointed by the Court, pursuant to 12 V.S.A. § 4946 et seq. and V.R.C.P. 80.1. The sale shall take place within six months of the last redemption date under paragraph 4 above, unless extended by the Court or the case is stayed by a bankruptcy filing. Plaintiff shall send a Notice of Sale as required by 12 V.S.A. §4952(b) at least 30 days before the sale. Plaintiff shall also publish a Notice of Sale in a newspaper distributed in *Town of Danby* in the State of Vermont for three (3) consecutive weeks prior to the date of sale and shall specify that the property shall be sold to the highest bidder at a public sale to be held at the Mortgaged Property on a specified date and time. The first publication shall be not less than 21 days prior to the date of sale. Prior to any request for confirmation, Plaintiff shall file a copy of all Notices of Sale with the Court with a certificate of service. Plaintiff shall also file a copy of the published Notice of Sale with the Court, with a copy of publications or a certificate of publication dates.

7. Public Sale. At the sale, the person holding the public sale shall sell to the highest bidder all of the Mortgaged Property, "AS IS, WITH ALL FAULTS, WITH NO REPRESENTATIONS OR WARRANTIES OF ANY KIND", subject to easements, rights of way, covenants, permits, reservations and restrictions of record, title defects, superior liens, environmental hazards, unpaid real estate taxes (*delinquent and current, with all penalties and interest as of the date of closing on the sale of the property after confirmation of the sale by the Vermont Superior Court*), and municipal liens, if any. If the Plaintiff makes the highest bid, Plaintiff shall be required to pay cash or certified funds only to the extent that its bid is in excess of the sum due it by the Defendant Mortgagor up to the date of sale under this Judgment and Decree. The purchaser at the sale shall pay in good funds to the person holding the sale. The Notice of Sale shall specify that this form of payment is authorized. In any case, a deposit shall be paid at the time of the public sale of \$10,000.00 in the form of cash, a bank treasurer's check, or certified funds. *The deposit is subject to forfeiture.* Plaintiff is authorized to require the purchaser (*other than the mortgagee*) to sign a *no contingency* Purchase and Sale Agreement (*other than subject to confirmation by the Court*) at the time of the Public Sale. Any adjournment of the sale must comply

with the requirements of 12 V.S.A. § 4953(b). *The Notice of Sale shall provide that other terms may be announced at the time of the sale and identify place to inquire for other terms.*

8. Confirmation. Following the sale, pursuant to 12 V.S.A. § 4954(a), the Plaintiff shall file with the Court a Report of Sale on oath together with a Request for Confirmation of the sale, which shall include an Accounting of the sale proceeds and a proposed order confirmation the sale. The Plaintiff shall also send, via first class mail, postage prepaid, copies of the Report of Sale and Request for Confirmation to all parties who appeared in the foreclosure action or to their attorneys of record, as well as to the defendant Mortgagor at the Mortgagor's last known address. The Court may hold a confirmation hearing, or confirm the sale without a hearing.

At confirmation, Plaintiff may be allowed reasonable attorneys' fees and the reasonable expenses of making the sale pursuant to 12 V.S.A. §4954(c) as well as taxes paid since the accounting, if any, pursuant to 12 V.S.A. §4935 *and such other expenses incurred as allowed by the mortgage and as allowed by the Court.*

If the Court confirms the sale, the Court shall issue a Confirmation Order which shall set forth the information required by V.R.C.P. 80.1 (k) and shall order distribution of sale proceeds to named persons in specified amounts in accordance with 12 V.S.A. §4954(c). If the Court confirms the sale, the Confirmation Order shall constitute conclusive evidence as against all persons that that the power was duly executed. 12 V.S.A. §4954(a).

9. Deficiency Claim. Any motion for a deficiency judgment based on a claim in the complaint shall be filed prior to the issuance of the confirmation order, pursuant to 12 V.S.A. § 4954(d); otherwise any claim for a deficiency judgment against a mortgagor will be deemed waived.

Plaintiff has the right to commission an independent appraisal made of the fair market value of the premises pursuant to VRCP 80.1(i).

If you wish to appeal this judgment, you must request permission to appeal by motion filed with the Court within 14 days of the date of entry of the judgment.

Dated at Rutland, Vermont this 7/1/2025


Hon.
Presiding Judge