

STATE OF VERMONT

SUPERIOR COURT
Windham Unit

CIVIL DIVISION
Docket No. 24-CV-04916

SOUTHSTATE BANK, N.A.,
Successor by Merger to Atlantic
Capital Bank, N.A.,
Plaintiff

vs.

HERMIT THRUSH NEST LLC;
HERMIT THRUSH BREWERY, LLC;
and all UNNAMED OCCUPANTS
OF 7 US ROUTE 5,
DUMMERSTON, VERMONT,
Defendants

JUDGMENT AND DECREE OF FORECLOSURE BY JUDICIAL SALE

This foreclosure action was brought before the Court by Complaint of Plaintiff filed December 3, 2024 and served upon Defendants Hermit Thrush Nest LLC and Hermit Thrush Brewery, LLC through their Registered Agent Phillips, Dunn, Shriver & Carroll, P.C. on December 12, 2024. Judgment was granted to Plaintiff by Default Judgment as against the Defendants filed September 19, 2025. The Accounting was entered on September 24, 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 \$1,006,032.32, accrued interest of \$220,683.71, late charges of \$9,081.31, court costs of \$560.37 reasonable attorney's fees of \$14,498.50, recording fees for the complaint and town clerk search fees in the amount of \$245.09; and additional amounts allowed in the accounting of: \$11.80 in postage fees, making the total amount due Plaintiff as of September 24, 2025 the sum of \$1,251,113.10, plus interest accruing at the per diem rate of \$331.02 from September 24, 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 conveyed to Hermit Thrush Nest, LLC by Warranty Deed of Auspex Enterprises, Inc. dated October 16, 2021 and recorded December 2, 2021 in Book 132, Page 78, and further described as follows:

Being all and the same lands and premises conveyed to Auspex Enterprises, Inc. by Warranty Deed of Dummerston Management, dated December 17, 1999 and recorded December 22, 1999 in Book 72, Page 500 of the Dummerston Land Records and in said deed, being more particularly described therein as follows:

Being all and the same land and premises as were conveyed to Dummerston Management by Warranty Deed of After the Fall Products, Inc., dated July 26, 1994, and recorded on August 9, 1994, with the Dummerston Land Records at Book 63, Page 240 and therein described as follows:

Being all and the same land and premises as were conveyed to After the Fall Products, Inc. by Warranty Deed of Applewood Pure Food Company, Inc. dated December 24, 1986, and recorded in Book 52, Page 119 of the Dummerston Land Records and described therein as follows:

Being all and the same land and premises conveyed to Applewood Pure Food Company, Inc. by Warranty Deed of Tri-State Automotive Warehouse, Inc. dated March 21, 1983, and recorded in Book 47, Page 476 of the Dummerston Land Records and being further described as follows:

Beginning at a point on the westerly side of the highway leading between Brattleboro and Dummerston known as Putney Road marked by an iron pipe, which point is located on the Brattleboro Dummerston Town Line, thence running northerly along the westerly line of said Putney Road eight hundred twenty (820') feet to an iron pipe for a corner on lands formerly of Roland E. McSweeney and Martha McSweeney; thence northwesterly four hundred fifty-five (455') feet, more or less, along a barbed wire fence and lands formerly of McSweeney to the center of a brook; thence running in a general southerly direction along the center of said brook and other lands of the Grantors to the Brattleboro Town Line; thence running easterly along the Brattleboro Town Line as marked by a barbed wire fence along lands now or formerly of Alice Bennet to the place of beginning, together with all buildings standing thereon.

Subject, nevertheless, to whatever rights may have been previously granted to the State of Vermont for highway purposes along U.S. Route #5, pole line easement rights and appurtenant rights previously granted to Green Mountain Power Company and the New England Telephone and Telegraph Company.

Reference may be had to a plan entitled “Property Survey in Dummerston, Vermont for Albert J. Cote, Jr.” dated July 1963 and prepared by T.E. Schreyer, Jr. filed with the Dummerston Town Clerk.

Reference is hereby made to the aforementioned deeds and their records and to the deeds referred to therein and their records in further aid of this description.

4. Redemption. It is further ordered that unless Defendant Hermit Thrush Nest, LLC or Defendant Hermit Thrush Brewery, LLC, pays to the Clerk of the Court **on or before October 27, 2025, the date of redemption payable to Court, before 4:30 p.m.**, the sum of \$1,251,113.10, together with any amounts established under paragraph 2 above, and together with per diem interest of \$331.02 from September 24, 2025 to the date of redemption, then the Plaintiff may file a motion for a writ of possession. *If no redemption is made, then such party shall be foreclosed and forever barred from all equity of redemption in the Mortgaged Property, except as otherwise set out herein.*

5. Mortgagor Defendant's Additional Right to Redeem. Defendant/Mortgagor Hermit Thrush Nest, LLC 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 Dummerston*** 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, with additional amount to be deposited within 5 days to bring the deposit amount to 10% of the successful bid. *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 to be announced at the time of the sale and identify place to inquire for other terms.*

The properties may be offered for sale individually, in their entirety, and/or in any combination thereof, at the sole discretion of the seller. The seller has the right, at its option, to accept or reject any offer, whether submitted separately or as part of a package.

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).

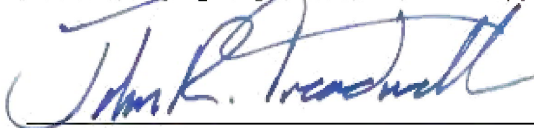
9. Deficiency Claim. Any motion for a deficiency judgment based on a claim in the complaint shall be filed prior to the issuance of the confirmation order, pursuant to 12 V.S.A. § 4954(d); otherwise any claim for a deficiency judgment against a mortgagor will be deemed waived.

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 Newfane, Vermont

Electronically signed pursuant to V.R.E.F. 9(d)



10/22/2025

John R. Treadwell
Superior Court Judge

Date