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APR 23 1990
DAV. CO. CHANCERY COURT

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

JOHN W. MURDOCK, et. al.

Plaintiffs

-vs-

CATHERINE BURRUS CASTLEMAN and DANIEL L. WISCHHOF, TRUSTEE

Defendants

BOOK 8093 PAGE 762

No. 89-3170-II

ORDER FILED & ENTERED
APR 23 1990
MINUTE BOOK ____ PAGE ____

A G R E E D J U D G M E N T

It appearing to the Court by the signatures of counsel for the parties, and of each of the Plaintiffs, that the following things and matters have been agreed among them in disposition of all matters at issue in this case, it is ORDERED, ADJUDGED and DECREED as follows:

I. The Murdock Property

The Deed of Trust exhibited to the original Complaint in this matter gave to Catherine Burrus Castleman a security interest in real property then owned by the plaintiffs Murdock, and particularly described in paragraph A below. With respect to that property and the transaction originally at bar:

A) Catherine Burrus Castleman is the legal and equitable owner of the house and lot located at 209 Shepherd Hills Drive, being described as follows:

> LAND in Davidson County, Tennessee, being Lot No. 17 on the Plan of Shepherd Hills, Section 1, as of record in Book 2331, Page 46, Register's Office for said County.
>
> SAID Lot No. 17, which is a corner lot, fronts 130 feet on the easterly margin of Shepherd Hills Drive and fronts 180.47 feet on the northerly margin of Spring Branch Drive, said frontages being joined by a curve having a length of 31.41 feet, and extends back 208.7 feet on the southeasterly line and 296 feet on the northerly line to a point of intersection.
>
> BEING the same property conveyed to John Murdock, et us, Mary L. Murdock, by deed from General L. Casteel, et us, Ollie M. Casteel, of record in Book 5299, Page 432, Register's Office for Davidson County, Tennessee.

by virtue of a good and valid Trustee's Deed of record at Book 7989, Page 486, R. O. D. C., she having been the highest and best

bidder at a foreclosure sale conducted November 17, 1989 by Daniel L. Wischhof, Trustee, under and pursuant to a Deed of Trust granted to him by plaintiffs Murdock and copied as Exhibit B to the original complaint in this cause.

B. Catherine Burrus Castleman shall have and recover of Plaintiffs, each of them, and their surety, National Bond and Surety Corporation, the sum of $9,619.37, for which execution may issue after 12:00 Noon on June 1, 1990 if not sooner paid. Payment of said sum, with such judgment interest as shall accrue after June 1, 1990, whether voluntary or by execution, shall fully satisfy all obligations of the Plaintiffs under their Deed of Trust Note in the amount of $75,000.00 made on July 30, 1987 to the order of Catherine Burrus Castleman.

C. Catherine Burrus Castleman shall have and recover possession of the real property described above, and a Writ of Possession shall issue after 12:00 Noon on June 1, 1990.

D. Notwithstanding the provisions of sections B and C above, if Plaintiffs shall pay to Catherine Burrus Castleman or her attorney the sum of $86,299.37 in certified funds on or before 12:00 Noon on June 1, 1990, she shall deliver to the plaintiffs Murdock a quitclaim deed to said real property, and the money judgment granted at section B shall be deemed satisfied.

II. The Carson Castleman Property

All of the Plaintiffs except the Murdocks executed a second Deed of Trust Note to Catherine Burrus Castleman on July 30, 1987, in the principal amount of $76,907.04, a true copy of which is attached hereto as Exhibit A. This note was secured by a Deed of Trust granted by Carson L. Castleman and wife Mabel A. Castleman to Daniel L. Wischhof, Trustee, of record at Book 7326, Page 850, R. O. D. C., and a true copy thereof is attached hereto as Exhibit B.

One issue in the present lawsuit is whether all payments made

by Plaintiffs to Catherine Burrus Castleman since July 30, 1987 should have been credited toward the Note secured by the Murdock property. A substantial portion of said payments were properly creditable to the Note secured by the Castleman property. Adjudication of how the said payments were to be credited with respect to the Murdock note will necessarily adjudicate how they should be credited to the Carson Castleman note.

All parties to the Note secured by the Carson Castleman property are before the Court and with their consent hereto the Court finds it appropriate to dispose of the rights and obligations of the parties thereunder. It it accordingly ORDERED, ADJUDGED and DECREED that:

A. Catherine Burrus Castleman is the legal and equitable owner of the house and lot located at 309 Twin Hills Drive, being described as follows:

> LAND in Davidson County, Tennessee, being Lot No. 182 on the Plan of Shepherd Hills, Section 8, as of record in Book 2854, Page 120, Register's Office for said County.
>
> SAID Lot fronts 165 feet on the northeasterly side of Twin Hills Drive, and runs back 333.9 feet on the sourheasterly line and 415.6 feet on the northwesterly line, which is a broken line, to a dead line in the rear on which it measures 87 feet.
>
> BEING the same property conveyed to Carson L. Castleman, et. ux. Mabel L. Castleman, by deed from J. S. Wooten, et. ux. Mary Thomas Wooten, of record in Book 3537, Page 135, Register's Office for Davidson County, Tennessee.

by virtue of a good and valid Trustee's Deed of record at Book 8036, Page 781, R. O. D. C., she having been the highest and best bidder at a foreclosure sale conducted January 26, 1990 by Daniel L. Wischhof, Trustee, under and pursuant to the Deed of Trust described above.

B. Catherine Burrus Castleman shall have and recover of each and all of the Plaintiffs, <u>except</u> the Murdocks, a further and additional money judgment in the amount of $8,838.87, for which execution may issue after 12:00 Noon on June 1, 1990. This judgment does not bind the surety. Payment of said judgment,

whether voluntary or by execution, shall fully satisfy all obligations of Plaintiffs under their Deed of Trust Note of July 30, 1987 in the amount of $76,907.04 payable to Catherine Burrus Castleman.

C. Catherine Burrus Castleman shall have and recover possession of the real property described above, and a Writ of Possession shall issue after 12:00 Noon on June 1, 1990.

D. Notwithstanding the provisions of sections B and C above, if Plaintiffs shall pay to Catherine Burrus Castleman or her attorney the sum of $88,296.54 in certified funds on or before 12:00 Noon on June 1, 1990, she shall deliver to the plaintiffs Carson L. Castleman and Mabel A. Castleman a quitclaim deed to said real property, and the money judgment granted at section B shall be deemed satisfied.

III. Final Disposition

Notwithstanding the provisions of this Order that would delay execution, this Order is a final disposition of all matters at issue among all parties as and when entered.

Costs are assessed to the Plaintiffs, for which execution may issue if necessary.

Enter this 23 day of April, 1990.

C. Allen High, Chancellor

I hereby certify that this is a true copy of original instrument filed in my office.
This 23 day of April 1990
CLAUDIA C. BONNYMAN Clerk & Master
By Virginia Lovell
Deputy Clerk

APPROVED FOR ENTRY:

Ronald H. Pursell
101 Cumberland Ave. Suite 209
Madison, Tennessee 37115
860-0094
Attorney for Plaintiffs

Daniel L. Wischhof, #6655
1712 Parkway Towers
Nashville, Tennessee 37219
242-9000
Attorney for Defendant

John W. Murdock

State of Tennessee)
County of Davidson)

Personally appeared before me, the undersigned Notary Public in and for said County and State, the within named John W. Murdock, with whom I am personally acquainted (or proven to me on the basis of satisfactory evidence) and executed this document in my presence as his free act and deed.

Notary Public

My commission expires: 1-23-93

Mary L. Murdock

State of Tennessee)
County of Davidson)

Personally appeared before me, the undersigned Notary Public in and for said County and State, the within named Mary L. Murdock, with whom I am personally acquainted (or proven to me on the basis of satisfactory evidence) and executed this document in my presence as her free act and deed.

Notary Public

My commission expires: 1-23-93

DEED OF TRUST NOTE

$76,907.04 July 30, 1987

For Value Received, the undersigned promises to pay to the order of **CATHERINE BURRUS CASTLEMAN**, the sum of SEVENTY-SIX THOUSAND NINE HUNDRED SEVEN & 04/100 ($76,907.04) DOLLARS. Said note is payable in monthly installments of One Thousand ($1,000.00) Dollars each, beginning September 1, 1987, and a like amount on the 1st day of each succeeding month thereafter until all of said amount, both principal and interest, is paid in full. Said Note shall bear interest computed on the basis of Two (2%) percent above the prime rate as is charged by Commerce Union Bank of Nashville, Tennessee.

This Deed of Trust Note cannot be assumed without the express written consent of the legal holder hereof.

All installments of both principal and interest due on this note are payable at par, in lawful money of the United States of America, at the Noteholder's designation.

This note is secured by a Deed of Trust of even date herewith on land in Davidson County, Tennessee, being more fully described in said Deed of Trust.

Demand, notice and protest are expressly waived; and if not paid in full at the time and in the manner above specified, then all principal and accrued interest shall, at the option of the legal holder hereof, become at once due and payable without notice, and in the event of such default, we will pay all expenses and costs, including reasonable attorney's fees, incident to collection or enforcement or protection of any rights appertaining to, or growing out of the instrument securing this note; and it is expressly agreed that all rights granted to the payee herein, under the provisions of the instrument securing this note, shall inure to the benefit of, and be enforceable by, any lawful owner and holder of this note.

Failure of the owner and holder of this note to enforce any right herein granted, at any time, shall not preclude the right to enforce such rights as to any subsequent default or violation, the rights herein granted being continuing ones.

Carson L. Castleman
CARSON L. CASTLEMAN

Mabel A. Castleman
MABEL A. CASTLEMAN

Jerry Randall Castleman
JERRY RANDALL CASTLEMAN

Melody A. Castleman
MELODY ANN CASTLEMAN

James Ronald Castleman
JAMES RONALD CASTLEMAN

Cathy L. Castleman
CATHY LYNN CASTLEMAN

EXHIBIT A

Deed of Trust

BOOK 7326 PAGE 850 41

FOR AND IN CONSIDERATION of One Dollar to us *paid, the receipt of which is acknowledged, and the other considerations hereinafter mentioned,* CARSON L. CASTLEMAN, et ux, MABEL A. CASTLEMAN

have this day bargained and sold, and do hereby transfer and convey, to DANIEL L. WISCHHOF *Trustee, and his successors in trust, certain property in the State of Tennessee,* DAVIDSON *County, described as follows, to-wit:*

LAND in Davidson County, Tennessee, being Lot No. 182 on the Plan of Shepherd Hills, Section 8, as of record in Book 2854, Page 120, Register's Office for said County.

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SAID Lot fronts 165 feet on the northeasterly side of Twin Hills Drive, and runs back 333.9 feet on the southeasterly line and 415.6 feet on the northwesterly line, which is a broken line, to a dead line in the rear on which it measures 87 feet.

BEING the same property conveyed to Carson L. Castleman, et ux, Mabel A. Castleman, by deed from J. S. Wooten, et ux, Mary Thomas Wooten, of record in Book 3537, Page 135, Register's Office for Davidson County, Tennessee.

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IDENTIFICATION REFERENCE

AUG 17 10 27 AM '87

FILED & RECORDED
DAVIDSON COUNTY, TN

RECORDERS MEMO
LEGIBILITY OF WRITING, TYPING OR PRINTING IN
THIS DOCUMENT UNSATISFACTORY WHEN RECEIVED

TO HAVE AND TO HOLD said property to the said DANIEL L. WISCHHOF *Trustee, and his successor in trust, forever* we *covenant that* we are *lawfully seized of the said property have a good right to convey it, and that the same is unencumbered.*

We *further covenant and bind* ourselves, our *heirs and representatives, to warrant and defend the title to said property to the said* DANIEL L. WISCHHOF *Trustee and his successor in trust, and his assigns, forever, against the lawful claims of all persons.*

But this conveyance is made IN TRUST for the following uses and trusts, and for no other purposes, to-wit:

To secure the payment of one note of even date herewith in the principal sum of SEVENTY-SIX THOUSAND NINE HUNDRED SEVEN & 04/100 ($76,907.04) DOLLARS, payable to the order of CATHERINE BURRUS CASTLEMAN.

Said Note is payable in monthly installments of One Thousand ($1,000.00) Dollars each, beginning September 1, 1987, and a like amount on the 1st day of each succeeding month thereafter until all of said amount, both principal and interest, is paid in full.

Said Note shall bear interest computed on the basis of Two (2%) percent above the prime rate as is charged by Commerce Union Bank of Nashville, Tennessee.

This mortgage cannot be assumed without the express written consent of the legal holder hereof.

MAXIMUM PRINCIPAL INDEBTEDNESS FOR TENNESSEE RECORDING TAX PURPOSES IS $76,907.04.

As part of the consideration for the execution of this instrument, and of the indebtedness secured hereunder, the undersigned agree to keep all buildings now on, or to be hereafter erected on said property, insured in some reliable fire insurance company, or companies, for the sum of $77,000.00, *or at least the maximum insurable value, until the indebtedness herein secured is fully paid, and to have the loss, if any, made payable on the policy, or policies, to said trustee for the benefit of the lawful owner or holder of said indebtedness as his interest may appear.*

EXHIBIT B

Undersigned further agree to pay all taxes and assessments thereon, general or special, and to pay them when due, and, upon demand of said trustee or the lawful owner and holder of said indebtedness, to pay, discharge, or remove, any and all liens which may be hereafter placed against said property and which shall adversely affect the lien of this instrument or enforcement of the terms and provisions hereof, to keep the improvements on said property in good repair and preservation, and in case the trustee or his successors or the lawful owner and holder of said indebtedness shall hereafter be required to appear in any court or tribunal to enforce this deed of trust or the terms thereof or to defend the title to, or possession of, said property, or the lien of this instrument, or appear in any court to prove the above indebtedness, all the costs and expenses of such appearance or proceedings, together with a reasonable attorney's fee shall be allowed, and if paid by the trustee or the lawful owner and holder of said indebtedness, shall bear 6 percent interest from the date of payment and shall be and become a part of the indebtedness secured hereby.

Now, if the undersigned grantors shall pay said indebtedness, and all installments thereof, when due, according to the terms hereof, or of any note or notes evidencing the same, and pay taxes, keep up repairs, keep said premises insured, and perform the other and foregoing obligations and agreements then this trust conveyance shall be of no further force or effect. But if grantors fail to pay said indebtedness, or any part or installment thereof, promptly at maturity, or if, failing to pay taxes, keep up repairs, keep said premises insured, or perform said other obligations and agreements as herein provided, grantors fail to to reimburse the Trustee or lawful owner and holder of said indebtedness for all sums, with interest, so expended by said Trustee, or lawful owner and holder of said indebtedness, within thirty days from date of such payment, this trust conveyance shall remain in full force and effect and at the option of the lawful owner and holder of said indebtedness or part or installments thereof then past due and unpaid, all remaining unpaid indebtedness shall become due and payable at once, without notice, and the trustee, or his successor in trust, is hereby authorized and empowered upon giving twenty days notice by three publications in any newspaper, daily or weekly, published in Davidson County, Tennessee, to sell said property at the front door of the Court House in said county to the highest bidder for cash, at public outcry, free from the statutory right of redemption, homestead, dower and all other exemptions of every kind, which are expressly waived, and the said trustee or his successor in trust, is authorized and empowered to execute and deliver a deed to the purchaser. The creditor may bid at any sale under this trust conveyance. Grantors agree that the trustee may, at any time after default in the payment of any part of said indebtedness, enter and take possession of said property, and shall only account for the net rents actually received by him. Grantors further agree that, in the event the Trustee fails, before selling said property as herein provided, to enter and take possession thereof, the purchaser shall be entitled to immediate possession thereof upon the delivery to him by the trustee of a deed for said property.

In the event of the death, absence, inability, or refusal to act of the said trustee at any time when action under the foregoing powers and trust may be required, the owner of the debt hereby secured is hereby authorized to name and appoint a successor to execute this trust, and the title herein conveyed to the above named trustee shall be vested in said successor.

In the event of a sale of said property under and by virtue of this trust, the grantors and all persons holding under them shall be and become the tenants at will of the purchaser from and after the execution and delivery of a deed to such purchaser, said tenancy to be determined at the option of said purchaser upon five days written notice.

Upon any sale under this Deed of Trust, the proceeds will be applied by the Trustee

First To pay all the costs and charges of executing this trust, including attorney's fees and the expenses of any litigation which may arise on account of the execution and enforcement of this trust, or in connection therewith as above provided

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Second To pay said debt, or any balance thereof then remaining unpaid

Third The residue to be paid to grantors, or their order.

Witness our hand s this 30th day of July, 1987, the corporate party if any having caused its name to be signed hereto by its duly authorized officers on said day and date.

Carson L. Castleman
CARSON L. CASTLEMAN

Mabel A. Castleman
MABEL A. CASTLEMAN

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STATE OF TENNESSEE
COUNTY OF DAVIDSON

Personally appeared before me, the undersigned, a Notary Public in and for said County and State CARSON L. CASTLEMAN, et ux, MABEL A. CASTLEMAN

the within named bargainor s, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that they executed the within instrument for the purposes therein contained.

Witness my hand and official seal at Nashville, Tennessee, this 30th day of July, 19 87.

Kathy J. Beard
Notary Public

Commission expires 1-21-90

KATHY J. BEARD NOTARY PUBLIC DAVIDSON COUNTY

STATE OF TENNESSEE
COUNTY OF DAVIDSON

Before me, _____, a Notary Public in and for the State and County aforesaid, personally appeared _____, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged _____self to be _____ of the _____, the within named bargainor, a corporation, and that _____he as such _____ being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by _____self as _____.

Witness my hand and seal, at office in _____, this _____ day of _____, 19____.

_____ Notary Public

Commission expires _____

DEED OF TRUST

FROM

CARSON L. CASTLEMAN, et ux,

TO

MABEL A. CASTLEMAN

CATHERINE BURRUS CASTLEMAN

Prepared by:

LAW OFFICES
WILLIAM D. CASTLEMAN
101 CUMBERLAND AVENUE
SUITE 100
MADISON, TENNESSEE 37115
AREA CODE 615
TELEPHONE 865 4750

Carson L. Castleman

Carson L. Castleman

State of Tennessee)
County of Davidson)

Personally appeared before me, the undersigned Notary Public in and for said County and State, the within named Carson L. Castleman, with whom I am personally acquainted (or proven to me on the basis of satisfactory evidence) and executed this document in my presence as his free act and deed.

Notary Public

My commission expires: 1-23-93

Mabel A. Castleman

Mabel A. Castleman

State of Tennessee)
County of Davidson)

Personally appeared before me, the undersigned Notary Public in and for said County and State, the within named Mabel A. Castleman, with whom I am personally acquainted (or proven to me on the basis of satisfactory evidence) and executed this document in my presence as her free act and deed.

Notary Public

My commission expires: 1-23-93

Jerry Randall Castleman

Jerry Randall Castleman

State of Tennessee)
County of Davidson)

Personally appeared before me, the undersigned Notary Public in and for said County and State, the within named Jerry Randall Castleman, with whom I am personally acquainted (or proven to me on the basis of satisfactory evidence) and executed this document in my presence as his free act and deed.

Notary Public

My commission expires: 1-23-93

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Melody Ann Castleman
Melody Ann Castleman

State of Tennessee)
County of Davidson)

Personally appeared before me, the undersigned Notary Public in and for said County and State, the within named Melody Ann Castleman, with whom I am personally acquainted (or proven to me on the basis of satisfactory evidence) and executed this document in my presence as her free act and deed.

Notary Public

My commission expires: 1-23-93

James Ronald Castleman
James Ronald Castleman

State of Tennessee)
County of Davidson)

Personally appeared before me, the undersigned Notary Public in and for said County and State, the within named James Ronald Castleman, with whom I am personally acquainted (or proven to me on the basis of satisfactory evidence) and executed this document in my presence as his free act and deed.

Notary Public

My commission expires: 1-23-93

Cathy Lynn Castleman
Cathy Lynn Castleman

State of Tennessee)
County of Davidson)

Personally appeared before me, the undersigned Notary Public in and for said County and State, the within named Cathy Lynn Castleman, with whom I am personally acquainted (or proven to me on the basis of satisfactory evidence) and executed this document in my presence as her free act and deed.

Notary Public

My commission expires: 1-23-93

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