

rec'd 4/19/17



COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT
CIVIL BRANCH
DIVISION 3
CIVIL ACTION NO. 17-CI-00640

WHITAKER BANK, INC.

PLAINTIFF

v.

ANDOVER GOLF AND COUNTRY CLUB, INC.;
COMMONWEALTH OF KENTUCKY, COUNTY OF FAYETTE;
THE RANGE, INC., COMMUNITY TRUST BANK, INC. AND
GREATAMERICA FINANCIAL SERVICES CORPORATION

DEFENDANTS

And

BALL HOMES, INC. AND
LOCHMERE DEVELOPMENT CORPORATION

INTERVENING
DEFENDANTS

ORDER ALLOWING INTERVENTION OF BALL HOMES, INC. AND LOCHMERE DEVELOPMENT CORPORATION; SUE SPONTE ORDER CONSOLIDATING INSTANT CASE WITH CASE 17-CI-986; AND WHITAKER BANK'S SUMMARY JUDGMENT AGAINST ANDOVER GOLF AND COUNTRY CLUB, INC., THE RANGE, INC. AND COMMONWEALTH OF KENTUCKY, COUNTY OF FAYETTE, ORDER OF SALE WITH REQUIRED ANNOUNCEMENT AND ORDER ALLOWING WHITAKER TO CREDIT BID

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. The following Defendants were each duly served with Summons according to law, and the service on each Defendant is approved:

DEFENDANT	DATE SERVED & METHOD OF SERVICE	ANSWER FILED
Andover Golf and Country Club, Inc.	2/17/17 by hand delivery to counsel for the Defendant, Thomas Flanigan	YES
The Range, Inc.	2/20/17 hand delivery to counsel for the Defendant, Barry Stilz	YES

Commonwealth of Kentucky, County of Fayette	3/1/17 by Certified Mail	YES
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B. The following Defendants are in default for failure to file an Answer to the Complaint and thereby confesses that the allegations in the Complaint are true: Plaintiff, Whitaker Bank, Inc. is seeking Summary Judgment only on its claims asserted in this action against the Defendants, Andover Golf and Country Club, Inc., The Range, Inc. and Commonwealth of Kentucky, County of Fayette.

C. Interlocutory Defendants Ball Homes, LLC's and Lochmere Development Corporation's motion to intervene heard by the Court on April 10, 2017, is SUSTAINED; and they are permitted to intervene in the instant matter as defendants and asserts their claims by pleading to be filed in the record.

JUDGMENT

This matter having been heard by the court on April 10, 2017, upon motion of the Plaintiff, Whitaker Bank, Inc (hereinafter "Whitaker Bank"), (i) for Summary Judgment against the Defendants, Andover Golf and Country Club, Inc. ("Andover"), The Range, Inc., ("The Range") and Commonwealth of Kentucky, County of Fayette ("Fayette County"), (ii) for an Order of Sale of the subject real property; and (iii) for an Order Allowing Credit Bid by Whitaker Bank; and the Court having determined that there are no genuine issues of material fact presented as to Defendants Andover, The Range and Fayette County, and that Plaintiff is entitled to judgment as a matter of law on its Notes; and the Court having heard the motion to intervene filed by Ball Homes, Inc. and Lochmere Development Corporation and their separate objection to a sale order as premature; and the Court being sufficiently advised and having considered the same;

It is hereby ORDERED AND ADJUDGED as follows:

1. Whitaker Bank is hereby granted an *In Personam* Judgment against Defendant, Andover, as follows:

- a. As to Count 1 of the Complaint, the sum of \$2,929,631.67.
- b. As to Count 2 of the Complaint, the sum of \$276,818.21.
- c. As to Count 1, interest on the principal portion of \$2,924,201.03 at the contract rate of interest as set forth in Note 1 as defined in and attached to the Complaint, per annum, from February 9, 2017 until paid.
- d. As to Count 2, interest on the principal portion of \$242,433.39 at the contract rate of interest as set forth in Note 2 as defined in and attached to the Complaint, per annum, from February 9, 2017 until paid.
- e. The costs and fees of this action in an amount not less than \$4,164.57 as of March 14, 2017.
- f. Reimbursement for attorneys' fees in this action in an amount not less than \$98,523.50 as of March 14, 2017.
- g. Sums advanced in payment of *ad valorem* taxes, insurance premiums, winterization, or in preservation of the real estate.
- h. Plus late fees, costs, attorneys' fees, and other advances made pursuant to the terms of Note 1 and Note 2.

2. To secure payment of its Judgment, Whitaker Bank is adjudged to have a lien on the real property located in Lexington, Fayette County, Kentucky more particularly described on the attached Exhibit "A" (the "Property") which is incorporated herein by reference, together with all improvements on the real estate, which lien is adjudged to be prior and superior to all other liens and encumbrances held by Defendants Andover or

the Range, except the lien of Fayette County for properly assessed unpaid ad valorem real property taxes asserted in this action.

3. The Property cannot be divided without materially impairing the value thereof or the interest of the parties thereto, and the Property shall be sold as a whole for the purpose of enforcing the Judgment and lien herein adjudged against the Property.

4. The Property shall be immediately referred to the Master Commissioner of this Court for sale and shall be sold by the Master Commissioner upon the conditions set forth in RFCC 26(b)(4), which are incorporated herein by reference. Such terms and conditions shall have such force and effect as if set forth fully herein. The purchaser shall assume the ad valorem taxes for the current year and all subsequent years.

5. The purchaser at the Master Commissioner's sale shall take the Property free and clear of the claims of the parties to this action and all existing liens recorded after the recording of Whitaker Bank's Lis Pendens Notice, but it shall be sold subject to the following:

- a. Current year real estate taxes affecting the Property for which the purchaser(s) shall take no credit on the purchase;
- b. Easements, restrictions and stipulations of record;
- c. Any matters that would be disclosed by an accurate survey or inspection of the Property; and
- d. Any current assessments for public improvements levied against the Property.
- e. The rights, restrictions and claims, if any, of Ball Homes, LLC and Lochmere Development Corporation and successors and assigns, including their "right of first refusal to purchase the leased property

and improvements, at the price of and according to the same terms and conditions of any bona fide purchase offer” and and as to the obligation to operate on the property as a golf course and country club and that “the property and facilities shall be operated under the name ‘Andover Golf and Country Club’, shall be continuously operated, and shall be used for no other purpose, all as is more fully set forth in Fayette Circuit Court Civil Action, Case No. 17-CI-00986, *Whitaker Bank, Inc. v. Ball Homes, LLC and Lochmere Development Corporation* (“Declaration of Rights Proceeding”) and Fayette Circuit Court Civil Action, Case No. 17-CI-1360, *Ball Homes, Inc. and Lochmere Development Corporation and Troy Thompson, assignee v. Whitaker Bank, Inc. and Andover Golf and Country Club, Inc.*

6. In the event Whitaker Bank purchases the Property, it shall be entitled to take credit against its Judgment for the required deposit and purchase price to the extent that the sale price is sufficient to pay the Judgment, and in such event no bond will be required.

7. None of the Master Commissioner, the Court, or Whitaker Bank shall be deemed to warrant title of the Property to the purchaser.

8. The Master Commissioner shall sell the real estate on April 24, 2017 at 12:00 noon (local time) in the Fayette Circuit Court Building in Lexington, Fayette County, Kentucky, at a place posted the morning of the sale, at public outcry to the highest bidder. Prior to the beginning of the sale of the Property, the Master Commissioner shall announce and inform the prospective bidders that the Property is being sold subject to the rights, restrictions, claims or interest in the Property, if any, of Ball Homes, LLC and

Lochmere Development Corporation and successors and assigns, including their "right of first refusal to purchase the leased property and improvements, at the price of and according to the same terms and conditions of any bona fide purchase offer" and as to the obligation to operate on the property a golf course and country club and that "the property and facilities shall be operated under the name 'Andover Golf and Country Club', shall be continuously operated, and shall be used for no other purpose, all as is more fully set forth in Fayette Circuit Court Civil Action, Case No. 17-CI-00986, *Whitaker Bank, Inc. v. Ball Homes, LLC and Lochmere Development Corporation* ("Declaration of Rights Proceeding") and Fayette Circuit Court Civil Action, Case No. 17-CI-1360, *Ball Homes, Inc. and Lochmere Development Corporation and Troy Thompson, assignee v. Whitaker Bank, Inc. and Andover Golf and Country Club, Inc.*, and in the Golf Course Lease, Construction and Purchase Agreement dated July 11, 1988, the Amendment to Golf Course Lease, Construction and Purchase Agreement dated July 24, 1990, and Memorandum of Lease and Purchase Agreement dated December 9, 1988, filed of record in the Fayette County Clerk's office on December 12, 1988, in Deed Book 1498, page 225.

9. Risk of loss shall pass to the purchaser upon confirmation of sale.
10. The proceeds of the sale shall be applied in the following priority:
 - a. The Master Commissioner's costs and fees;
 - b. Any unpaid delinquent state, county and/or city ad valorem real estate taxes;
 - c. The full satisfaction of the mortgage lien held by Whitaker Bank as adjudicated herein, including reimbursement for its costs, expenses and attorney's fees as set forth herein.

- d. The satisfaction of any junior liens on the real estate in the same priority that they are held on the real estate.
- e. Any remaining proceeds of the sale shall be held by the Master Commissioner until further order of this Court.

11. To further secure payment of the Judgment awarded herein, Whitaker Bank is hereby adjudged to have a valid and enforceable security interest and lien on the "Collateral" as identified in the Complaint, but for clarification, not including those forty (40) golf carts identified in paragraph 30 (c) of the Complaint.

12. Jurisdiction is retained for such further orders and proceedings as may be necessary.

13. This is a final and appealable Judgment as to the Order of Sale, and there is no just cause for the delay in the entry thereof.

14. All other matters are reserved for adjudication and this Court retains jurisdiction.

15. Furthermore, the Court *sue sponte* orders that this proceeding (case # 17-CI-640) is consolidated with the 3rd Division Declaration of Rights Proceeding, case # 17-CI-986). At present this consolidation shall in no manner affect, delay, or impede the sale of the Property, except as specifically set forth herein.

16. Pursuant to CR 77.04, the Circuit Court Clerk shall serve notice of the entry of this Judgment and Order of Sale.

DATED this 17 day of April, 2017

/s/ JAMES D. ISHMAEL, JR.
A TRUE COPY
ATTEST: VINCENT RIGGS, CLERK
FAYETTE CIRCUIT COURT
BY [Signature] DEPUTY
JUDGE, FAYETTE CIRCUIT COURT

HAVE SEEN AND APPROVED:

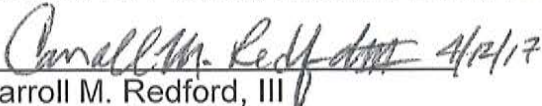
/s/ JAMES H. FRAZIER, III

JAMES H. FRAZIER III, JMA
MASTER COMMISSIONER,
FAYETTE CIRCUIT COURT

TO BE ENTERED:



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*Attorney for Ball Homes, LLC and
Lochmere Development Corporation*

CLERK'S CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing was mailed this APR 17 2017 day of April, 2017, to:

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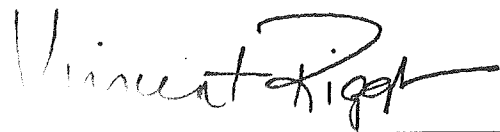
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Lexington, KY 40507
*Attorney for Ball Homes, LLC and
Lochmere Development Corporation*



CLERK, FAYETTE CIRCUIT COURT

EXHIBIT A

3375-3450 TODDS ROAD, LEXINGTON, KY
PVA PARCEL NO. 20107850

TRACT 1:

Being all of Tract 5 of the Brighton Place Subdivision as shown on the plat of record at Cabinet H, Slide 425, in the Office of the Fayette County Clerk, all of Parcels 8 and 9, Tract 9, of the Brighton Place Subdivision as shown on the plat of record at Cabinet H, Slide 571 in the aforesaid Clerk's Office, all of Parcels 6 and 7, Tract 10, of the Brighton Place Subdivision as shown on the plat of record at Cabinet H, Slide 571, in the aforesaid Clerk's Office, all of Tracts 11 and 12 of the Brighton Place Subdivision as shown on the plat of record at Cabinet H, Slide 425, in the aforesaid Clerk's Office, all of Tract 13 of the Brighton Place Subdivision as shown on the Corrected Amended Minor Plat of record at Cabinet I, Slide 131, in the aforesaid Clerk's Office, all of Parcels 4 and 5, Tract 15, of the Brighton Place Subdivision as shown on the plat of record at Cabinet H, Slide 571, in the aforesaid Clerk's Office, and all of Tract 16 of the Brighton Place Subdivision as shown on the plat of record at Cabinet H, Slide 571, in the aforesaid Clerk's Office.

There is EXCEPTED from the above-described Tract 1 the following:

All of that property conveyed by Andover Golf & Country Club, Inc. a Kentucky corporation, to Ball Homes, Inc., a Kentucky corporation, by deed dated December 17, 1996, of record in Deed Book 1887, Page 494 in the Fayette County Clerk's office. Said property being more particularly described as:

Being all of Parcel "A", as shown on the Consolidation Minor Subdivision Plat of 3209 Brighton Place Drive (Lot 119, Block "A") and a portion of Andover Golf and Country Club Property in the Village of Andover Forest, Brighton Place Subdivision, Unit 6-B, of record at Plat Cabinet K, Slide 167, in the Office of the Fayette County Clerk.

TRACT 2:

Being all of tracts 1B-1, 1B-2, 1B-3, 2A, 2B and 4B of the Fourth Amended Non-Building & Consolidation Minor Subdivision Plat of the Lochmere Development Corporation Property and Stonecase Valley (a portion of), of record in Plat Cabinet I, Slide 134, in the Fayette County Clerk's office.

There is INCLUDED in Tract 2 described above the following:

- a) All of Parcel 3, as shown on the Corrected Amended & Consolidation Minor Subdivision Plat of Lochmere, Unit 11-B, Section 2 and Lochmere Development Corporation Property, Tract 1B-3 & Tract 2B, (Andover Golf

Course), of record in Plat Cabinet K, Slide 892, in the Fayette County Clerk's office;

b) All of Parcel 1, as shown on the Consolidation Minor Subdivision Plat of Stonecase Valley, Lot 33, Unit 5, Plat Cabinet "K", Slide 38 and Lochmere Development Corp. Property, Parcel 3, Plat Cabinet "K", Slide 381, of record in Plat Cabinet L, Slide 316, in the Fayette County Clerk's office;

There is EXCEPTED from the above described Tract 2 the following;

a) All of that property conveyed by Andover Golf & Country Club, Inc., a Kentucky non-profit corporation, to Lochmere Development Corporation, a Kentucky corporation, by deed dated June 21, 1999, of record in Deed Book 2065, Page 595 in the Fayette County Clerk's office. Said property being more particularly described as:

Being all of Parcel 6, of Lochmere Unit 11-B, Section 2, as shown on Corrected Amended & Consolidation Minor Subdivision Plat of Lochmere, Unit 11-B, Section 2 and Lochmere Development Corporation Property, Tract 1B-3 & Tract 2B, (Andover Golf Course), of record in plat Cabinet K, Slide 892, in the Fayette County Clerk's office, and

b) All of that property conveyed by Andover Golf & Country club, Inc., a Kentucky non-profit corporation, to Lochmere Development Corporation, a Kentucky corporation, by deed dated June 9, 1992, of record in Deed Book 1632, Page 395, in the Fayette County Clerk's office, Said property being more particularly described as follows:

Being all of Parcel 1, of the Consolidation Minor Subdivision Plat of the Andover Golf and Country Club Property and Lochmere - Unit Two, Subsection Three, Lot 45, 708 Andover Village Drive, of record in Plat Cabinet I, Slide 568, in the Fayette County Clerk's office,

Tract 1 and Tract 2 being a portion of the same property conveyed to Andover Golf & Country Club, Inc. by Deed dated July 24, 1990, of record in Deed Book 1553, Page 692, in the Fayette County Clerk's office.

TRACT 3:

Being all of Parcel 1, of Stonecase Valley, Unit 7, Section 2 as shown on Final Record Plat of Stonecase Valley, Unit 7, Section 2, of record in Plat Cabinet K, Slide 861 in the Fayette County Clerk's office.

Tract 3 being a portion of the same property conveyed to Andover Golf & Country Club, Inc. by Deed dated August 20, 1999, of record in Deed Book 2075, Page 631, in the Fayette County Clerk's office.

TRACT 4:

Being all of Parcel 4a, of Lochmere Unit 11-B, Section 2, as shown on Corrected Amended and Consolidation Minor Subdivision Plat Lochmere Unit 11-B, Section 2 and Lochmere Development Corporation Property Tract 1B-3 and Tract al (Andover Golf Course), of record in Plat Cabinet K, Slide 892, in the Fayette County Clerk's office.

Being a portion of the same property conveyed to Andover Golf & Country Club, Inc. by Deed dated June 21, 1999, of record in Deed Book 2065, Page 591 and Deed dated August 20, 1999, of record in Deed Book 2075, Page 631, all references to the Fayette County Clerk's office.

TRACT 5:

Being all of Parcel 1 as shown by the Amended Final Record Plat and Consolidation Plat of Lochmere Development Corp. Property (A Portion of) and Stonecase Valley (A Portion of), of record in Plat Cabinet J, Slide 455, in the Fayette County Clerk's office and made a part hereof for a more particular description; the improvements thereon being known and designated as 3452 Todds Road.

Being the same property conveyed to Andover Golf & Country Club, Inc. by deed dated March 21, 1999, of record in Deed Book 2065, Page 586, in the Fayette County Clerk's office.

TRACT 6:

Being all of Parcel 1 as shown on Consolidation Minor Subdivision Plat of Lochmere Development Corp. Property (A Portion of) and Stonecase Valley —Unit 5, Lot 31, (3520 Hunter's Green Way) and Stonecase Valley Unit 5, Lot 32, (3516 Hunter's Green Way), of record in Plat Cabinet K, Slide 381, in the Fayette County Clerk's office.

Being the same property conveyed to Andover Golf & Country Club, Inc., a Kentucky non-profit corporation, by deed dated September 30, 1997, of record in Deed Book 1938, Page 463, in the Fayette County Clerk's office.

TRACT 7

Being all of Parcel 2 as shown on Consolidation Minor Subdivision Plat of Lochmere Development Corp. Property (A Portion of) and Stonecase Valley —Unit 5, Lot 31, (3520 Hunter's Green Way) and Stonecase Valley — Unit 5, Lot 32, (3516 Hunter's Green Way), of record in Plat Cabinet K, Slide 381, in the Fayette County Clerk's office.

Being the same property conveyed to Andover Golf & Country Club, Inc., a Kentucky non-profit corporation, by Deed dated September 30, 1997, of record in Deed Book 1938, Page 467, in the Fayette County Clerk's office.

LESS AND EXCEPTING from the above described Tracts 1-7 all of the property conveyed by Andover Golf & Country Club Inc. to 1) Zachery Curtis Prewitt QSST Trust, by Quitclaim Deed dated May 22, 2014, of record in Deed Book 3284, Page 601, and 2) Commonwealth of Kentucky for the use and benefit of the Transportation Cabinet, Department of Highways, by deed dated February 12, 2015, of record in Deed Book 3298, Page 377, both of record in the office of the Fayette County Clerk.

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