

STATE OF INDIANA)
) SS:
COUNTY OF VANDERBURGH)

IN THE VANDERBURGH SUPERIOR COURT
CAUSE NO. 82D05-1710-MF-005520

U.S. BANK NATIONAL ASSOCIATION,)
As Trustee, for the benefit of the holders of)
COMM 2014 – CCRE17 Mortgage Trust)
Commercial Mortgage Pass-Through Certificates,)

Plaintiff,)

vs.)


COURT BUILDING DEVELOPMENT, LLC)
An Indiana limited liability company;)
HULMAN BUILDING DEVELOPMENT, LLC)
An Indiana limited liability company;)
FENDRICH PLAZA DEVELOPMENT, LLC)
An Indiana limited liability company;)
KUNKEL SQUARE, LLC,)
An Indiana limited liability company;)
FIRST SECURITY BANK OF OWENSBORO;)
T2 MCCURDY, LLC; ARBOR REALTY)
COLLATERALIZED LOAN OBLIGATION 2013-)
1 LTD.; THE PRIVATE BANK;)
FIRST FINANCIAL BANK, NA;)
ALPHA MECHANICAL SERVICE, INC.)
A Kentucky corporation)

Defendants.)

VANDERBURGH SUPERIOR COURT

FILED

December 4, 2018


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ORDER

This cause came on to be heard on Plaintiff's Motion for Immediate Appointment of Receiver and Expiated Hearing, and the court having considered the Motion and oral testimony presented by the plaintiffs and the defendants, and having heard the statements of counsel, and the Court now finds (i) that the action relates to various parcels of real estate which are the subject of mortgages in favor of Plaintiff, namely (a) 329- 331 Main Street, Evansville, Indiana 47708 – ("Kunkel Property"), (b) 100 E. Sycamore and 15 John Street, Evansville, Indiana 47708 ("Fendrich Property"), (c) 122 – 123 NS 4th Street, Evansville, Indiana 47708 ("CBD Property"), and (d) 20 NW 4th Street and 109 NW Third Street, Evansville, Indiana 47708 ("Hulman Property" together with the Fendrich Property, CBD property and Kunkel Property, the "Real Estate"); (ii) that the Real Estate is collateral for outstanding indebtedness

owed to Plaintiff; and (iii) that the appointment of a receiver is necessary for the protection and preservation of the Real Estate and rights of the Plaintiff which has met its burden of establishing grounds for the appointment of a receiver under I.C. §32-30-5-1(4) (C), (E) and (F).

IT IS THEREFORE ORDERED that Jan Meeks, as agent and behalf of Summit Enterprises, Inc. d/b/a Summit Real Estate Services” (“Receiver”), who is a resident of this state and who is not a party, attorney, or person interested in this action, be and hereby is appointed receiver of the “Receivership Property”. For purposes of this order “Receivership Property” means the Real Estate and all personal property and other property as described in the Mortgages (as defined in the Complaint). Receiver’s compensation shall be as follows:

(a) A monthly property management fee payable as follows:

- (i) The greater of (1) 6% of the monthly gross revenue of the Kunkel Property or (2) \$2,500.00 for the Kunkel Property;
- (ii) The greater of (1) 5% of the monthly gross revenue of the Hulman Property or (2) \$3,090.00 for the Hulman Property;
- (iii) The greater of (1) 5% of the monthly gross revenue of the CBD Property, or (2) \$2,190.00 for the CBD Property; and
- (iv) The greater of 5% of the monthly gross revenue of the Fendrich Property, or (2) \$1,920.00 for the Fendrich Property.

(b) For new leases, the Receiver or Receiver’s engaged broker shall receive a commission of 6% if there is no co-broker or 7% if there is a co-broker, of the base minimum rent for the initial term of the lease (excluding any option periods).

(c) For any lease renewal, the Receiver or Receiver’s engaged broker shall receive a commission of 3% of the base minimum rent in the initial renewal period, excluding any options.

(d) There shall be no additional fees for accounting.

(e) All receivership fees and property management fees shall be prorated for any partial months.

IT IS FURTHER ORDER, ADJUDGED and DECREED that:

1. That the receiver forthwith file with the clerk of this court a bond in the sum of \$176,000.00 with surety to be approved by the court conditioned that Receiver will faithfully discharge the duties of receiver in this action and obey the order of the court therein;

2. That until further order of this Court the Receiver be and is hereby authorized to take and have complete and exclusive control, possession, and custody of the Real Estate and Receivership Property;

3. That the defendants and any persons acting under his direction shall upon presentation of a certified copy of this order deliver to the Receiver the Real Estate and Receivership Property and that all

persons are enjoined from in any way disturbing the possession of the Receiver and from prosecuting any actions which affect the Real Estate or Receivership Property;

4. That the Receiver be and hereby is authorized to employ such managers, agents, employees, servants, accounts, and attorneys as may in Receiver's judgment be advisable or necessary in the management, conduct, control, or custody of the affairs of the defendants and of the assets thereof, and that Receiver be and Receiver hereby is authorized to make such payments and disbursements as may be needful and proper for the preservation of the properties of the Defendant, including the authority to make payments of debts entitled to priority;


5. That Receiver be and Receiver hereby is authorized to receive and collect any and all sums of money due or owing to the Defendants in any manner, whether the same are now due or shall hereafter become due and payable, and the Receiver be and hereby is authorized to do such things and enter into such agreements in connection with the management, care, and preservation of the properties of the defendants as Receiver may deem advisable, and is authorized to incur such expenses and make such disbursements as may in Receiver's judgment be advisable or necessary in connection with the care, preservation and maintenance of the properties. Income shall be applied as follows (but subject to lien rights granted to Plaintiff):

- (a) To Receiver's approved fees and expenses;
- (b) To the current operating expenses occurring following the date of this Order, including any on-site employee payroll expenses, any real estate taxes and any other taxes stemming from the operations of the Receivership Property and use in normal business operations incurred during the receivership to the extent set forth in an Approved Budget. Receiver shall not make disbursements other than permitted under the Approved Budget except for:
 - (i) life-threatening or other health or safety issues; or
 - (ii) variations on individual line items not exceeding 10% so long as expenses in the aggregate are within 5% of the Approved Budget on a monthly basis; or
- (c) To the loan balance due Plaintiff until paid in full; and
- (d) Any surplus to be held pending further order of the Court.

6. That the Receiver be and hereby is authorized to institute, prosecute and defend, compromise, adjust, intervene in or become party to such actions or proceedings in state or federal courts as may in Receiver's opinion be necessary or proper for the protection, maintenance and preservation of the assets of the Defendants or the carrying out of the terms of this order, and likewise to defend, compromise or adjust or otherwise dispose of any or all actions or proceedings instituted against him as Receiver or against the Defendants and also to appear in and conduct the defense of any suit or adjust or compromise any actions or proceedings now pending in any court by or against the Defendants where such prosecution, defense or other disposition of such actions or proceedings will in the judgment of the Receiver be advisable or proper for the protection of the properties of the Defendants.

7. The Receiver shall be required to file accountings in accordance with I.C. §32-30-5-15 every six (6) months, commencing from the date of this order, until the conclusion of this action.

Dated: December 4, 2018



HON. MARY MARGARET LLOYD
JUDGE, VANDERBURGH SUPERIOR COURT

Distribution To:

Pamela A. Paige
Shawn M. Sullivan

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