

Order and Terms of Sale

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
OWENSBORO DIVISION

ELECTRONICALLY FILED

LSC18, LLC

PLAINTIFF

v.

CIVIL ACTION NO. 4:17cv-00165-JHM

LOI M. HONG, a/k/a LOI MOC HONG;
COMMONWEALTH OF KENTUCKY,
COUNTY OF MCLEAN;
UNKNOWN SPOUSE, IF ANY, OF LOI M. HONG
UNKNOWN TENANT(S), IF ANY, OF
2320 COFFMAN SCHOOL HOUSE ROAD
SACRAMENTO, KENTUCKY 42372

DEFENDANTS

IN REM JUDGMENT AND ORDER OF SALE

Upon Motion of LSC18, LLC for Entry of Judgment against Defendants, Loi M. Hong a/k/a Loi Moc Hong, Unknown Spouse, if any, of Loi M. Hong, and Unknown Tenant(s), if any, of 2320 Coffman School House Road, Sacramento, KY 42372 (collectively the "Defendants in Default") and the Clerk of this Court having made her Entry of Default [Docket No. 22] on March 15, 2018 with respect to the Defendants in Default; and this matter also having come before the Court on the Motion for Summary Judgment with respect to the Answer filed by McLean County, Kentucky, the Court finding that there is no genuine issue of material fact and that LSC18, LLC is entitled to judgment as a matter of law; and the Court being otherwise sufficiently advised;

IT IS THEREFORE HEREBY ORDERED AND ADJUDGED as follows:

1. That LSC18, LLC, shall recover a judgment *in rem* only against the below-described Property up to the amount owing on the Note described in paragraph 9 of Plaintiff's Complaint in the principal amount of \$1,027,502.27 plus accrued interest to July 2, 2018, in the

amount of \$87,381.33, plus late fees in the amount of \$6,642.60, and charges for the preservation of the Property in the amount of \$1,906.64, for a total in rem judgment in the amount of \$1,133,707.86, plus post-judgment interest thereupon at the federal judgment rate from entry of this Judgment until the mortgage lien of LSC18, LLC is paid in full.

2. To secure the in rem Judgment in paragraph one (1) above, the Mortgage (referred to in paragraphs 10 and 11 of Plaintiff's Complaint) is adjudged a lien prior and superior to any and all other liens and encumbrances of the parties on the Property described in paragraph three (3) hereinbelow, except the following:

A. All unpaid city, state, county, school and fire real estate taxes now due, and payable hereafter, for which the purchaser shall not have a credit against the purchase price.

B. Easements, restrictions, stipulations and agreements of record in the office of the Clerk of the County Court of McLean County, Kentucky.

C. Assessments for public improvements levied against the Property.

D. Any encroachments or overlaps, and any other matters which an accurate survey or an inspection of the premises would disclose.

3. Said Property is titled in the name of Loi M. Hong a/k/a Loi Moc Hong, unmarried, and is situated in McClean County, Kentucky, and more commonly referred to as 2320 Coffman School House Road, Sacramento, Kentucky, to wit:

Parcel ID No.: 47-11B

Tract 1: A certain tract or parcel located on the northwest side of the Coleman (correctly known as Coffman) Schoolhouse Road approximately three miles southeast of the city of Sacramento in McLean County, Kentucky, and more specifically described as follows:

Beginning at an iron spike set in the centerline of the Coleman (correctly known as Coffman) Schoolhouse Road, said spike also being in an extension of the northwest line of

the Allen Whitmer property recorded in Deed Book 80, page 505, in the McLean County Court Clerk's Office; thence with said centerline of said Coleman (correctly known as Coffman) Schoolhouse Road, North 58 degrees 02' 45" West, a distance of 105.19 feet to an iron spike set in said centerline; thence serving the Allen J. Miller property recorded in Deed Book 106, page 741, of which this description is a part, the following four (4) calls: 1) North 50 degrees 02' 02" East a distance of 676.81 feet to an iron pin set in said Miller property; 2) North 39 degrees 57' 58" West a distance of 750.00 feet to an iron pin set in said Miller property; 3) North 50 degrees 02' 02" East a distance 1000.00 feet to an iron pin set in said Miller property; 4) South 39 degrees 57' 58" East, a distance of 850.00 feet to an iron pin set in said northwest line of said Whitmer property; thence with said northwest line of said Whitmer property, South 50 degrees 02' 02" West, a distance of 1644.17 feet to the point of beginning, containing 21.0295 acres and being subject to all legal written and unwritten easement and rights of way. This description was prepared from a physical survey conducted under the direction of Bruce K. Bailey, KY RLS #2939 on July 29, 1996.

TRACT II: A certain tract or parcel located 613 feet northeast of the Coleman (correctly known as Coffman) Schoolhouse Road approximately three miles southeast of the city of Sacramento in McLean County, Kentucky, and being more specifically described as follows:

Beginning at an iron pin set at a corner of the Hudson Foods, Inc., property recorded in Deed Book 137, page 155, at the McLean County Clerk's Office; thence with said Hudson Foods, Inc., property the following two (2) calls: 1) South 39 degrees 57' 58" East, a distance of 750.00 feet to an iron pin set at a corner of said Hudson Foods, Inc., property; 2) South 50 degrees 02' 02" West, a distance of 63.81 feet to an iron pin set in a line of said Hudson Foods, Inc. property; thence serving the Allen J. Miller property recorded in Deed Book 106, page 741, of which this description is a part, the following two (2) calls: 1) North 39 degrees 10' 34" West, a distance of 750.07 feet to an iron pin set in said Miller property; 2) 50 degrees 02' 02" East, a distance of 53.47 feet to the point of beginning, containing 1.0097 acres and being subject to all legal written and unwritten easements and rights of way. This description was prepared from a physical survey conducted under the direction of Bruce K. Bailey, KY RLS #2939 on January 19, 1998.

Subject to legal highways, prior mineral reservations and conveyances, easements, rights of way and restrictions of record.

This being the same property conveyed to Loy Hong, being the same person as Loi Moc Hong, from LY Farm, LLC, by deed dated September 18, 2013, of record in Deed Book 193, page 189.

together with all improvements, appurtenances and fixtures located thereon (the "Property").

4. The relief demanded in the Complaint is hereby granted and the Mortgage lien of

LSC18, LLC on the Property shall be enforced and to that end, the United States Marshall for the Western District of Kentucky (“United States Marshall”) is hereby directed to sell the Property by public sale at the McClean County Courthouse, pursuant to 28 U.S.C. §§2001, 2002 in the manner hereinafter set forth.

5. The Property hereinabove described is indivisible and cannot be divided without materially impairing its value or the value of LSC18, LLC’s interest thereon. Said Property shall be sold as a whole subject to those items in numerical paragraph two (2), *supra*, but free and clear of any right, title or interest of all the parties to the action, and further shall be sold free and clear of all other interests, liens and encumbrances thereon of any party arising by virtue of instruments which are recorded in the McClean County Clerk’s Office, or otherwise arise, after the recording of Plaintiff’s lis pendens notice filed herein.

6. In making the sale, the United States Marshall shall sell the above-described Property by public auction in accordance with the terms and provisions of 28 U.S.C. §2001, 2002. The United States Marshall shall advertise the sale ordered herein by publishing notice of said sale in a newspaper regularly published in McLean County, Kentucky at least once a week for at least four weeks prior to the sale. Said notice shall contain the time, place and terms of sale, together with a reference to this Judgment and Order of Sale and a description of the property to be sold, including the street address of: 2320 Coffman Schoolhouse Road, Sacramento, Kentucky 42372. Prior to making the sale ordered herein, the United States Marshall shall obtain an appraisal of the Property by two (2) disinterested, intelligent housekeepers of McClean County, Kentucky both of whom are actively engaged in or have had at least one year of experience in the field of real estate who shall report their appraisals in writing. LSC18, LLC shall pay the customary fees for the

appraisal, and shall be reimbursed upon distribution of the sale proceeds. Should the purchase price for the Property be less than two-thirds of its appraised value, the United States Marshall's deed conveying the Property to the purchaser shall contain a lien in the favor of Loi M. Hong reflecting their right to redeem the Property during the period for such redemption provided by law.

7. At the time of sale the successful bidder shall either pay to the United States Marshall the full cash price or make a deposit of 10% of the purchase price with the balance on credit for 60 days. If the purchase price is not paid in full, the successful bidder shall execute a bond at the time of sale with sufficient surety approved by the United States Marshall to secure the unpaid balance of the purchase price. The bond shall bear interest at the rate of 12% per annum from the date of sale until paid. Upon a default by the purchaser, the purchaser's initial deposit shall be forfeited and retained by the United States Marshall to be subsequently disbursed as a part of the proceeds of sale; whereupon the Property shall again be offered for sale in compliance with this Judgment. In the event the successful bidder is LSC18, LLC, then in lieu of the deposit, LSC18, LLC shall be allowed to bid on credit up to the amount of its Judgment set forth in paragraph one (1) herein.

8. The proceeds of sale of the Property, or a sufficiency thereof, shall be applied to the following items in this order of priority:

A. To the costs of this action, including the costs and fees of the United States Marshall;

B. Then to the full satisfaction of all unpaid state, city, county, school or fire real property taxes due and owing on the Property including all delinquent tax certificates:

C. Then to the full satisfaction of the mortgage lien in the favor of LSC18, LLC, up to the amount of indebtedness as set forth in numerical paragraph one (1), *supra*;

D. Any other junior liens or interests shall attach to the proceeds of sale, if any, in the same priority in which they attach to the Property.

9. The Property shall be sold "as is", and possession shall pass to the purchaser upon delivery of the deed. Risk of loss shall pass to the purchaser upon execution of bond at sale or payment of the purchase price in full, whichever occurs first.

10. That in order to conduct the foreclosure sale of the Property, the United States Marshall shall have possession of the Property. Any person(s) in possession or occupying the Property shall make the same available for inspection upon reasonable notice by the United States Marshall, and all such persons now possessing or occupying the Property shall completely move out of the Property not later than 30 days from the date of entry of this Judgment. Should any such person fail to move out of the Property in compliance with this Judgment, the United States Marshall shall be entitled to a Writ of Assistance providing for the eviction of such persons from the Property. The United States Marshall is hereby authorized and directed to perform any and all acts which may be reasonably required to protect the Property and to maintain the peace at the sale of the Property or at the eviction persons who fail to comply with this Judgment.

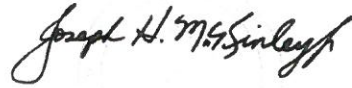
11. As soon as practicable following the sale, the United States Marshall shall file in Court the report of the sale of the Property and serve a copy on each party entitled to notice. The report of sale shall set forth the time and place of the sale, the appraised value of the Property, the purchase price, the identity and addresses of the purchasers, and the advertising, appraisal and other expenses of the sale incurred by the Plaintiff. Any party taking exception to the Report of

Sale shall, within ten (10) days from filing of Report of Sale, file in Court and serve a copy of his exceptions on all parties entitled to notice, and on the United States Marshall. After the report of sale has laid over for ten (10) days, the Plaintiff shall forthwith file a motion herein for confirmation of the sale and for entry of an order directing the United States Marshall to execute a deed of conveyance of the Property to the purchaser. The Plaintiff shall prepare the Marshall's deed. Neither the Plaintiff, nor the United States Marshall shall warrant title to the purchaser, and in no event shall the United States Marshall be personally obligated in any manner whatsoever. The United States Marshall shall tender the deed to the Court for approval and endorsement. The United States Marshall shall execute and deliver the deed to the purchaser of the property no later than five (5) business days after the court has confirmed the sale and approved the deed, and all costs, fees, and other required amounts due and owing, if any, have been paid by the Plaintiff or the purchase price has been paid in full by a third party purchaser. Following confirmation of the sale, payment in full of the purchase price, and delivery of the deed, the Plaintiff shall forthwith file of record herein a motion for distribution of proceeds, and to have this action stricken from the Court's active docket.

12. The purchaser(s) shall be required to assume and pay all taxes or assessments upon the Property for the current tax year and all subsequent years. All delinquent taxes or assessments or assigned certificates against the Property for prior years shall be paid from the sale proceeds for which the purchaser(s) shall not receive credit upon his purchase price; or in the event the Plaintiff is taking credit against the Judgment, then the delinquent property taxes and assessments shall be taxed as costs to be paid to the United States Marshall.

13. This action is retained for such further Orders and proceedings as may be necessary;

including motions to confirm sale.



Joseph H. McKinley Jr., District Judge
United States District Court

December 4, 2018

Tendered By:

/s/ Anthony Raluy
Anthony G. Raluy
Rendigs Fry Kiely & Dennis, LLP
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Louisville, Kentucky 40202
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