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STATE OF INDIANA
COUNTY OF LAKE

SS: 2002 105442

STATE OF INDIANA
LAKE COUNTY SUPERIOR COURT
SITTING AT CROWN POINT, INDIANA

2002 NOV 18 AM 11:45

Filed in Open Court

MORRIS W. CARTER
RECORDER

BARBARA R. DIVICH,
Plaintiff,

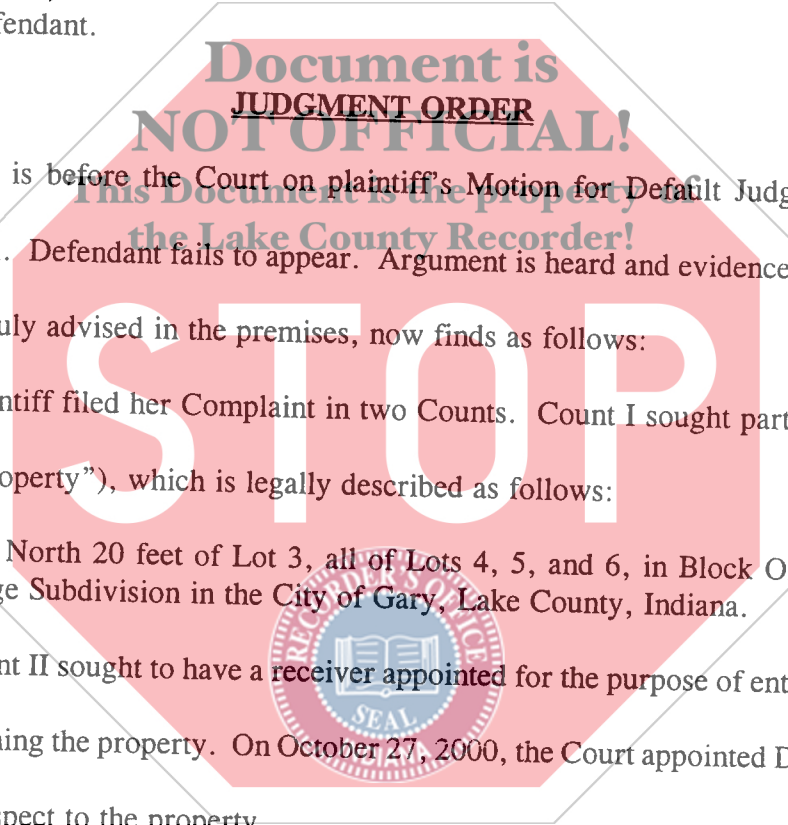
JUN 19 2001

vs.

Anna M. Anton
CLERK LAKE SUPERIOR COURT

CAUSE NO. 45DO1-0010-CP-429

CHARLENE FASSA,
Defendant.



This cause is before the Court on plaintiff's Motion for Default Judgment. Plaintiff appears by counsel. Defendant fails to appear. Argument is heard and evidence presented. And the Court, being duly advised in the premises, now finds as follows:

1. Plaintiff filed her Complaint in two Counts. Count I sought partition and sale of real estate ("the property"), which is legally described as follows:

The North 20 feet of Lot 3, all of Lots 4, 5, and 6, in Block One (1) of Ridge Subdivision in the City of Gary, Lake County, Indiana.

2. Count II sought to have a receiver appointed for the purpose of entering into rental agreements concerning the property. On October 27, 2000, the Court appointed Daniel A. Divich as receiver with respect to the property.

3. Court records indicate that defendant received service of the Summons and the Complaint by certified mail, return receipt of which was received by the Lake County Clerk's Office on November 1, 2000. Defendant also received personal service of the Summons and Complaint effected by process server on October 26, 2000. More than twenty-three (23) days

DULY ENTERED FOR TAXATION SUBJECT TO
FINAL ACCEPTANCE FOR TRANSFER

NOV 18 2002

LAKE COUNTY AUDITOR

Daniel Divich
1890 Truman St
Portage, 46368

001321

M. J. CS

have passed since service of the Summons and Complaint and defendant has failed to respond, appear, or otherwise defend in this matter. Plaintiff is entitled to judgment by default.

4. Plaintiff's Complaint seeks to have the Court order the sale of the property, with the proceeds divided between the owners according to their respective ownership interests. The respective ownership interests of the parties in the property are as follows:

- a. Plaintiff is the owner of an undivided $\frac{4}{5}$ interest in the property; and
- b. Defendant is the owner of an undivided $\frac{1}{5}$ interest in the property.

5. Since 1981, plaintiff has maintained the property by discharging the property tax bills, purchasing property insurance, paying the utility bills, and paying for repairs and improvements to the property. Since 1988, plaintiff has paid all property taxes with respect to the property in an amount totaling one hundred five thousand two hundred sixty-seven dollars four cents (\$105,267.04). Plaintiff purchased insurance on the property through the White Insurance Agency. Since 1989, plaintiff has paid twenty-three thousand four hundred seventy-two dollars (\$23,472.00) in insurance premiums. Plaintiff estimates that she has made seventy-three thousand eight hundred fifty-six dollars (\$73,856.00) in utility payments between 1985 and 2001. Plaintiff estimates that she has paid over thirty-three thousand two hundred ninety dollars (\$33,290.00) to repair and maintain the property between 1985 and 2001.

6. The property has been rented to a variety of tenants, and rental income has generally been paid to each of the property owners in proportionate share according to ownership interest. Rental income of fifty-five thousand nine hundred twenty dollars (\$55,920.00) has been received by the plaintiff without the defendant's twenty percent (20%) share (an amount of \$11,184.00) being distributed.

7. Defendant has failed to cooperate with several attempts to rent and/or sell the property. Because it consists of a commercial building, the property is not susceptible to division and cannot be partitioned among the respective owners. Therefore, the real estate must be sold in accordance with Ind. Code 32-4-5-13.

8. A tenant in common who has paid taxes or assumed other liens or encumbrances is entitled to proportionate reimbursement at the time of a sale. Janik v. Janik, 474 N.E.2d 1054, 1057. In a partition proceeding, the Court may also direct an equitable reimbursement from sale proceeds to a co-tenant who has made improvements and repairs made to the common property for the benefit of other co-tenants. Willett v. Clark, 542 N.E.2d 1354, 1358 (Ind. Ct. App. 1989). Partition is an equitable proceeding in which "all the equities relating to the tenancy are adjusted." Paidle v. Hestad, 348 N.E.2d 678, 680 (Ind. Ct. App. 1976). Plaintiff is entitled to contribution from defendant for all tax and insurance payments, as well as utility payments, and the costs to repair and maintain the property.

9. Defendant's contribution for taxes, insurance, utilities, and the cost of repair and maintenance for the property is to be taken from defendant's pro rata share of the proceeds from the sale of the real estate.

10. A commissioner must be appointed to effect the sale of the real estate and to make distribution of the proceeds of that sale as follows:

<u>Expenses</u>	
Taxes	\$105,267.00
Insurance	23,472.00
Utilities	73,856.00
Repairs/Maintenance	<u>33,290.00</u>
	\$235,885.00 x 20% = \$47,177.00

<u>Credits</u>	
Rents not distributed	\$55,920.00 x 20% = \$11,184.00
Expenses	\$47,177.00
Credits	<u>-11,184.00</u>
NET CONTRIBUTION	\$35,993.00

Daniel A. Divich, who was appointed receiver by this Court on October 27, 2000, is an appropriate person to be appointed commissioner pursuant to Ind. Code 32-4-5-15 for the purpose of selling the real estate.

WHEREFORE, IT IS ORDERED THAT:

- A. Judgment by default is entered against defendant, Charlene Fassa.
- B. Daniel A. Divich is appointed commissioner pursuant to Ind. Code 32-4-5-15 and is ordered to sell the property subject to the following conditions:
 - i. That from the proceeds of the sale, the commissioner first pay the costs of this action, including attorney fees in the amount of four thousand dollars (\$4,000.00);
 - ii. That the commissioner then divide the net proceeds according to the ownership interest of the parties, to-wit:

Barbara R. Divich	80%
Charlene Fassa	20%;
 - iii. That the commissioner shall then reimburse plaintiff, Barbara R. Divich, from defendant's share of the sale proceeds, in the amount of thirty-five thousand nine hundred ninety-three dollars (\$35,993.00); and
 - iv. That the commissioner shall then distribute the balance of the sale proceeds to the respective parties according to their respective ownership interests.
- C. Daniel A. Divich is ordered to file a report with the Court within thirty (30) days from the sale of the property.

SO ORDERED, this 19th day of June, 2001.

Ford & Associates
Paul P.
Magistrate

Diane Kavadias Schneider

~~_____~~, Judge
Lake Superior Court

