IN THE IOWA DISTRICT COURT IN AND FOR MADISON COUNTY

UNION STATE BANK OF WINTERSET,

EQUITY NO. 22647

vs.

ROBERT D. KUHNS, PATRICIA N. KUHNS; MASSEY FERGUSON BENCHMARK RESOURCES CORPORATION; and H & H STAR ENERGY, INC.,

ENTRY OF FORECLOSURE

Pursuant to Iowa Code Sections 655.4 and 655.5 you are advised that a Judgment of Foreclosure was entered on DECEMBER 9, 1985 against ROBERT D. KUHNS and PATRICIA N. KUHNS for a mortage recorded in the Madison County Recorders Office on JULY 7, 1982 in Book 136 at Page 190 describing the following real estate:

The East 120 acres of the Southwest Quarter of Section Eight (8), Township Seventy-six (76) North, Range Twenty-eight (28) West of the Fifth P.M., Madison County, Iowa.

(see attached)

SEAL OF THE DISTRICT COURT MADISON COUNTY IOWA

Janice Weeks
Clerk of Court

1562

FILED NO. _____
BOOK 37 PAGE 82

1986 JAN 27 PM 3:41

MARY E. WELTY
RECORDER
MADISON COUNTY, IOWA

No Fee

IND ✓
REC ✓
PAGE ✓

11 6 11
348

FILED
1985 DEC -9 AM 10:58
JANICE WEEKS
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA

IN THE IOWA DISTRICT COURT FOR MADISON COUNTY

UNION STATE BANK OF WINTERSET, Plaintiff	)	EQUITY No. 22647
vs	)	
ROBERT D. KUHNS, PATRICIA N. KUHNS; MASSEY FERGUSON, INC.; BENCHMARK RESOURCES CORPORATION; and H & H STAR ENERGY, INC., Defendants	)	DECREE OF FORECLOSURE

Now on this 9 day of Dec, 1985, this matter comes before the Court for hearing on the Plaintiff's Motion For Summary Judgment with the Plaintiff and Defendant, Robert D. Kuhns and Patricia N. Kuhns, appearing by counsel and the other Defendants not appearing in person or by counsel. The Court, having reviewed the files and records herein and having heard the statements of counsel, finds:

This cause of action was duly filed on May 24, 1985 and service of the original notice of the pendency of the action was made upon the Defendants, Robert D. Kuhns and Patricia N. Kuhns, and Massey Ferguson, Inc. on May 31, 1985. The Defendant, Benchmark Resources Corporation has filed a disclaimer of any right, title or interest in the real estate subject to this action. The Defendant, Benchmark Resources Corporation, is now in default and their default is hereby entered of record. The Defendant, H & H Star Energy, Inc. has previously been found to be in default and this default has previously been entered of record. The Court has full jurisdiction in this cause of action on all parties and on the subject matter of the action. The Court further finds that the Defendants are not in the military or naval service of the United States of America nor occupy any other status protected or benefited by the Soldiers and Sailors Civil Relief Act as amended. The Court further finds that there is no need to stay these proceedings pursuant to such statute and that none of the parties are under any legal disability whatsoever.

The Court finds that the Defendants, Robert D. Kuhns and Patricia N. Kuhns, on or about July 7, 1982 made, executed and delivered to the Plaintiff a promissory note in the principal amount of $79,500.00 payable according to the terms and conditions therein, a true copy of which note was attached to the Petition as Exhibit "A". On the same date, as a part of the same transaction for the purpose of securing the note with interest and other sums described therein, the Defendants, Robert D. Kuhns and Patricia N. Kuhns, made, executed and delivered to the Plaintiff a mortgage upon the real estate legally described as:

> The East 120 acres of the Southwest Quarter of Section Eight (8), Township Seventy-six (76) North,Range Twenty-eight (28) West of the Fifth P.M., Madison County, Iowa,

a true copy of which mortgage was attached to the Petition as Exhibit "B". This mortgage was duly recorded on July 7, 1982 in the Madison County Recorder's Office in Mortgage Record Book 136 at page 190. On or about March 12, 1984, as part of the same transaction to secure further advances made by the Plaintiff, the Defendants, Robert D. Kuhns and Patricia N. Kuhns, made, executed and delivered to the Plaintiff a modification agreement, a true copy of which agreement was attached to the Petition as Exhibit "C". This modification agreement was duly recorded in the Madison County Recorder's Office on March 12, 1984 in Mortgage Record Book 139 at page 623. The Plaintiff is the owner and holder of said note and mortgage and modification agreement shown as Exhibits "A", "B" and "C" to the Petition.

The Defendants, Robert D. Kuhns and Patricia N. Kuhns, have failed to make payment to the Plaintiff according to the terms of Exhibits "A" and "C" and said exhibits are by their terms past due and in default. The Plaintiff is owed on Exhibits "A" and "C" the total principal amount of $83,681.00. The interest accrues on said principal amount at the rate of thirteen percent (13%) per annum. The interest accrued on said principal as of May 20, 1985 is in the sum of $14,326.60. The interest accrues at the rate of $29.81 per day. As of December 9, 1985, the additional accrued interest from May 20, 1985 is in the sum of $6,051.43. The total principal and interest owed Plaintiff by the Defendants, Robert D. Kuhns and Patricia N. Kuhns, on December 9, 1985 is in the sum of $104,059.03. Exhibits "A" and "B" allow the Plaintiff to recover reasonable attorney fees in the event of suit on said exhibits. The Court finds the Plaintiff is entitled to reasonable attorney fees as part of its judgment in the sum of $500.00. The Court further finds that the Plaintiff has incured expense in the sum of $283.00 for continuing the abstract of title to the mortgaged premises incident to this action which amount is a reasonable charge for the services rendered. The Plaintiff is entitled to judgment against the Defendants, Robert D. Kuhns and Patricia N. Kuhns, for this amount.

The Court finds that the Defendant, Massey Ferguson, Inc. holds a judgment against the Defendant, Robert D. Kuhns, which was entered of record on December 17, 1984. The Plaintiff's mortgage lien is prior and paramount to the judgment lien of the Defendant, Massey Ferguson, Inc..

The Defendant, Benchmark Resources Corporation, has disclaimed any right, title or interest in and to the above described real estate.

The Defendant, H & H Star Energy, Inc., may claim an interest in the above described real estate by reason of a lease, dated July 27, 1984 and filed for record on September 21, 1984 in Madison County Recorder's Office in Miscellaneous Record Book 36 at page 63. The Defendant, H & H Star Energy, Inc., claims its interest by reason of an assignment of the oil and gas lease, which instrument is dated April 1, 1985 and filed for record on May 8, 1985 in Madison County Recorder's Office Record Book 36 at page 467. However, the Court finds that the right, title or interest of H & H Star Energy, Inc. in the above described real estate is junior and subordinate to the mortgage lien of the Plaintiff.

The Court further finds that the Plaintiff claims no right, title or interest in and to the real estate legally described as:

> Beginning at a point on the quarter section line 460 feet South of the center point of said Section Eight (8), running thence West 174 feet, thence South 340 feet, thence East 174 feet, thence North on the quarter section line to the point of beginning in Township Seventy-six (76) North, Range Twenty-eight (28) West of the 5th P.M., Madison County, Iowa.

The Court concludes that the Plaintiff is entitled to judgment on its Petition.

IT IS THEREFORE THE JUDGMENT AND DECREE OF THIS COURT that the Plaintiff, Union State Bank of Winterset, be and is hereby awarded personal judgment against the Defendant's, Robert D. Kuhns and Patricia N. Kuhns, and in rem judgment against the following described real estate:

> The East 120 acres of the Southwest Quarter of Section Eight (8), Township Seventy-six (76) North, Range Twenty-eight (28) West of the Fifth P.M., Madison County, Iowa, except for the tract legally described as: Beginning at a point on the quarter section line 460 feet South of the center point of said Section Eight (8), running thence West 174 feet, thence South 340 feet, thence East 174 feet, thence North on said quarter section line to the point of beginning, in Township Seventy-six (76) North, Range Twenty-eight (28) West of the 5th P.M., Madison County, Iowa.

in the sum of $104,059.03 plus interest after December 9, 1985 at the rate of $29.81 per diem and for the costs of this action, including attorney fees in the sum of $500.00 and abstracting costs in the sum of $283.00 and for such other and further accruing costs as may be provided by law.

IT IS FURTHER ORDERED AND DECREED BY THE COURT that the Plaintiff's judgment shall be a lien upon the aforesaid real estate from and after July 7, 1982 and this lien shall be prior and paramount to the liens and interest of all Defendants in said real estate.

IT IS FURTHER ORDERED AND DECREED by the Court that the Plaintiff's mortgage be and is hereby foreclosed and the equities of redemption of the Defendants and of every person or legal entity claiming by, through or under them, be and is hereby forever barred and foreclosed, except as otherwise provided by law.

IT IS FURTHER ORDERED AND DECREED by the Court that a special execution shall issue for the sale of the mortgaged premises to satisfy the Plaintiff's judgment with interest and costs as provided by law.

IT IS FURTHER ORDERED AND DECREED by the Court that in the event the mortgaged premises be sold under execution and not be redeemed as provided by law that a writ of possession shall issue directed to the Sheriff of Madison County commanding the Sheriff to put the grantee under sheriff's deed in possession of the premises and remove the Defendants, or persons claiming by, through or under any of them, out of possession of the premises.

IT IS FURTHER ORDERED AND DECREED BY THE COURT that Roger J. Fredericks is hereby appointed receiver to take custody and immediate possession of the foreclosed real property with the power and authority to keep, repair, and maintain the said foreclosed property and that said receiver shall serve without bond and with all powers and authority as provided by law.

IT IS FURTHER ORDERED BY THE COURT that the Court shall retain full jurisdiction in this matter until expiration of the rights of redemption and the issuance of the sheriff's deed to the grantees of the property of said Defendants and the grantees possession of said property pursuant to said deed or deeds.

JUDGE OF THE FIFTH JUDICIAL DISTRICT OF IOWA

APPROVED AS TO FORM AND CONTENT:

John E. Casper
Attorney for Plaintiff, Union State Bank

Gordon K. Darling, Jr.
Attorney for Defendant, Robert D. Kuhns
and Patricia N. Kuhns

Frank B. Harty
Attorney for Defendant, Massey-Ferguson, Inc.