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IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF NEVADA

IDA B. BLACK and LEROY G. BLACK.

Plaintiffs,

٧s

LEROY H. PERRY and

inclusive.

ORDER

DOROTHY M. PERRY and DOES I through V,

Defendants.

The Court having considered the Application of plaintiff for a Writ of Restitution, and being fully advised, finds and concludes as follows:

On January 25, 1982, the defendants' filed bankruptcy and listed the property the subject of this action as an asset in those proceedings. Thereafter, and on January 29, 1982, plaintiffs who were holders of a Note and Deed of Trust on the property filed a Notice of Default and Election to Sell Real Property under the Deed of Trust. On June 22, 1982, the Bankruptcy Court entered an Order lifting the automatic stay. July 29, 1982, the Trustee under the Deed of Trust sold the real property. This action was commenced because defendants have refused to vacate the property. The parties have stipulated to the foregoing facts and the only issue for determination is whether the plaintiffs were legally entitled to commence foreclosure proceedings after the automatic stay in bankruptcy.

Rule 601 (a) of the Federal Bankruptcy Act provides that the filing of the Petition in Bankrupty comprises a stay of any act to enforce a lien against property in the custody of the

Bankruptcy Court. Here, the real property, the subject of the 1 2 foreclosure suit, was in the custody of the Bankruptcy Court 3 between January 25, 1982, and June 22, 1982. Therefore, the Court concludes that the plaintiff had no legal right to proceed 5 with the foreclosure during the period of time the real property was in the constructive possession of the Bankruptcy Court. 6 7 Since the Notice of Default was given during that period of time and since plaintiff must rely on that period for computing 8 9 the statutory time period for the foreclosure, the Court con-10 cludes that plaintiffs' foreclosure sale was not validly con-11 ducted. Accordingly, this Court has no authority for granting the equitable relief sought by plaintiffs. This Order shall 12 13 not prohibit the plaintiffs from refiling the Default and pro-14 ceeding with foreclosure in accordance with the terms of their 15 Deed of Trust. 16 Accordingly, plaintiffs' Application for a Temporary Writ 17 of Restitution is DENIED without prejudice.

DATED this 44 day of October, 1982.

CERTIFIED CLEY

The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office.

100.93:1082 DATE: ___

Beenard Clerk of the Otto Judicial District Court of the State of Mcvada, in and for the County of Douglas.

incado

Copies served by mail this 6th day of October, 1982, to: Jeffrey K. Rahbeck, Esq., P.O. Box 5566, Stateline, Nv 89449; Peter A. Tomaino, Esq., P.O. Box 6102: Stateline, Nv 89449.

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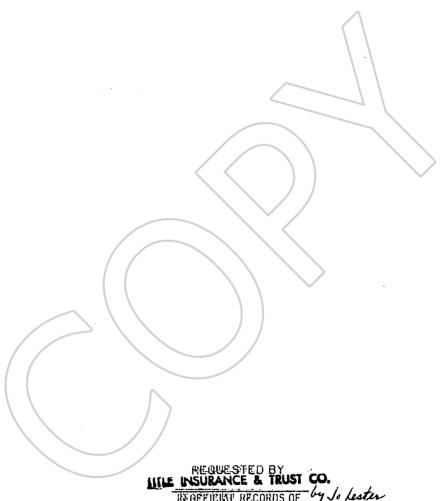
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DISTRICT JUDGE DOUGLAS COUNTY COURTHOUSE HINDEN, NEVADA 69423 73480



REOFFICIAL RECORDS OF by Jo Lester BOUGLAS CO. NEVADA
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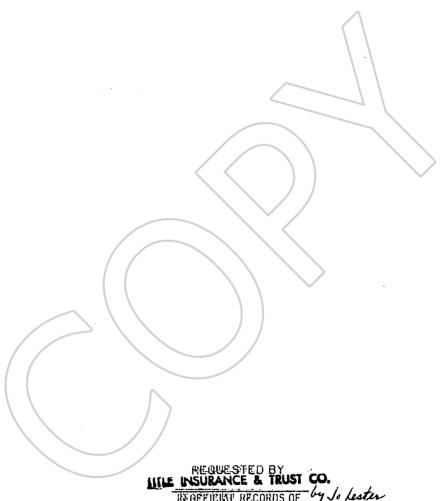
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DISTRICT JUDGE DOUGLAS COUNTY COURTHOUSE HINDEN, NEVADA 69423 73480



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