

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

ZIONS FIRST NATIONAL BANK,)

Plaintiff,)

vs.)

PBT INVESTMENT GROUP,LLC;)

SCOTT K. PEACHEE;)

PATRIOT TITLE,)

LLC; NORTH SALEM STATE BANK,)

UNITED STATES SMALL BUSINESS)

ADMINISTRATION,)

Defendants.)

UNITED STATES OF AMERICA,)

Counter/Cross Third-Party)

Plaintiff,)

vs.)

ZIONS FIRST NATIONAL BANK,)

Counter-Defendant,)

vs.)

PBT INVESTMENT GROUP, LLC;)

SCOTT K. PEACHEE;)

PATRIOT TITLE,)

LLC;)

Cross-Defendants,)

vs.)

CAUSE NO. 1:07-cv-0882-RLY-TAB

TITLE SOURCE OF INDIANA, INC.,)
And SKP FINANCIAL GROUP, LLC,)
)
Third-Party Defendants.)

**ENTRY ON THE UNITED STATES' MOTION FOR DEFAULT AND
SUMMARY JUDGMENT**

This matter is before the court on the United States of America's ("United States") Motion for Default and Summary Judgment. The court, having considered the submissions of the parties and being duly advised, now finds the motion should be **GRANTED**. The record reflects that the counter-defendant, Zions First National Bank ("Zions First National Bank" or "Plaintiff"), and the cross-defendants and third-party defendants, PBT Investment Group, LLC, Scott K. Peachee, Patriot Title, LLC, Title Source of Indiana, Inc., and SKP Financial Group, LLC, have been duly served, as more fully appears from the returns of service filed herein. The counter-defendant, Zions First National Bank, has filed an Answer to the counter-complaint. In addition, more than twenty (20) days have elapsed since service of the United States' cross-claim and third party complaint, and the cross-defendants and third-party defendants, PBT Investment Group, LLC, Scott K. Peachee, Patriot Title, LLC, Title Source of Indiana, Inc., and SKP Financial Group, LLC, have failed to plead or otherwise respond. The court therefore finds that the cross defendants and third-party defendants, PBT Investment Group, LLC, Scott K. Peachee, Patriot Title, LLC, Title Source of Indiana, Inc., and SKP Financial Group, LLC, are wholly in default, and further finds as follows:

1. There is now due from the cross-defendants and third-party defendants, PBT Investment Group, LLC, Scott K. Peachee, Patriot Title, LLC, Title Source of Indiana, Inc., and SKP Financial Group, LLC, jointly and severally, the principal sum of \$190,225.63 and accrued interest in the amount of \$11,867.94, for a total sum of \$202,093.57 as of June 17, 2008, plus interest accruing to the date of judgment at the rate of 5.052% per annum or \$26.33 per diem, plus costs of this action and accruing costs, including but not limited to accruing interest, advances of real estate taxes, assessments, insurance premiums, and all other costs of collection in preservation of the real estate as agreed to by the parties or as further ordered by the court, all without relief from valuation and appraisal laws.

2. That said sums are secured by the mortgage referenced both in the Plaintiff's complaint and in the United States' cross-claim and counterclaim and third-party complaint, and that said mortgage is a first and prior lien upon said real estate as against all defendants, except the Boone County Treasurer for the payment of real estate taxes and Zions First National Bank, to the extent of said sums, and that the United States is entitled to have its mortgage foreclosed against the property described in the complaint and in the United States' cross-claim and counterclaim and third party complaint, and commonly known as 220 West Washington Street, Suite A, Lebanon, Boone County, Indiana.

3. Zions First National Bank holds an interest upon the real estate described herein that is superior to that of the United States. The interest of Zions First National Bank

arises pursuant to its liens which were recorded with the Office of the Recorder of Boone County, Indiana, on October 8, 2003, as Instrument No. 0318437. However, Zions First National Bank agreed to subordinate to the United States its default interest, late fees, and its prepayment premium.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. That the United States is hereby granted an in rem and in personam judgment against the cross-defendant PBT Investment Group, LLC, and an in personam judgment against the cross defendants and third-party defendants, Scott K. Peachee, Patriot Title, LLC, Title Source of Indiana, Inc., and SKP Financial Group, LLC, jointly and severally, in the sum of \$202,093.57 as of June 17, 2008, plus interest thereafter to date of judgment at the rate of 5.052% per annum or \$26.33 per diem, plus costs of this action and accruing costs, including but not limited to advances of real estate taxes, assessments, insurance premiums, and all other costs of collection in preservation of the real estate as agreed to by the parties or as further ordered by the court, all without relief from valuation and appraisement laws.

2. That the equity of redemption of the defendant, PBT Investment Group, LLC, and all persons claiming by, through, or under it in and to said mortgaged premises located at 220 West Washington Street, Suite A, Lebanon, Boone County, Indiana, and legally described as follows, to-wit:

TRACT I: Lot #5 and #6 in Block 7 in the Original Plat of the Town, now city, of Lebanon, Boone County, Indiana.

Subject to any and all easements, agreements, and restrictions of record.

TRACT II: A part of Lot No. 1 in Block No. 14 in the Original Plat of the City of Lebanon, Boone County, Indiana, said lot is more particularly described as follows:

Commencing at point 38 feet 10 inches North of the Southeast Corner of Lot No. 1 in Block No. 14 in the original plat of the City of Lebanon, Indiana, and run thence North 84 feet to the Northeast corner of Lot No. 1, thence West 62 feet to the Northwest corner of said lot, thence South 84 feet to a point, thence East 62 feet to the place of beginning.

Be and the same is hereby forever barred and foreclosed, and that said real estate and all right, title, interest and claim of the defendants, and of all persons claiming by, through or under them in and to the same, or so much thereof as may be necessary for the purpose, unless the United States Marshal for the Southern District of Indiana is notified by Plaintiff or the United States that the sale should not go forward, be sold by the United States Marshal for the Southern District of Indiana in accordance with the laws relating to foreclosure of real estate mortgages, without right of redemption and without relief from valuation and appraisal laws, but subject to the statutory right of redemption of the United States pursuant to Title 28 of the United States Code, Section 2410. The real estate covered by said real estate mortgage may, at the election of the United States Marshal for the Southern District of Indiana, be sold as a unit or in separate parcels. The United States Marshal for the Southern District of Indiana, immediately upon consummating the sale, shall issue a Marshal's Deed to the purchaser; provided, however, that the interest acquired by the purchaser of the real estate at said sale shall be subject to

any lien of Boone County, Indiana, for real property taxes in regard to said real estate, and further subject to any lien of a municipality for sewer fees assessed against the real estate, which lien is duly and properly recorded in the Boone County Recorder's Office prior to delivery of the sale deed to the purchaser.

3. That the United States retains the right of redemption granted it by 28 U.S.C. Section 2410 (C) for the mortgaged premises located in Boone County, Indiana, and more particularly described in paragraph 2 above.

4. That the United States may submit a sealed written bid to the United States Marshal for the Southern District of Indiana at any time prior to the marshal's sale. The United States Marshal for the Southern District of Indiana shall unseal and publicly announce the United States' bid prior to receiving bids from persons present at the marshal's sale. The public announcement of the United States' written bid shall have the same effect as if a representative of the United States were present and submitted its bid at the marshal's sale. The United States may pay its bid with any part of the judgment that the United States is awarded in this judgment and Decree of Foreclosure.

5. That the proceeds arising from said sale of the real estate be applied as follows:

- a. To the payment of all costs and accruing costs.
- b. To the payment of real estate taxes owed to the Boone County Treasurer.
- c. To Zions First National Bank on its judgment entered June 3, 2008, except for default interest, late fees, and the prepayment premium.

- d. To the payment of the judgment of the United States against the cross defendants and third-party defendants, PBT Investment Group, LLC, Scott K. Peachee, Patriot Title, LLC, Title Source of Indiana, Inc., and SKP Financial Group, LLC for the sum of \$202,093.57 as of June 17, 2008, plus interest thereafter to date of judgment at a rate of 5.052% per annum or \$26.33 per diem, plus costs of this action and accruing costs, including but not limited to advances of real estate taxes, assessments, insurance premiums, and all other costs of collection in preservation of the real estate as agreed to by the parties or as further ordered by the court, all without relief from valuation and appraisal laws. Post judgment interest shall accrue thereafter at the statutory rate until paid in full;
- e. To the judgment of Zions First National Bank for default interest, late fees and prepayment premium.
- f. The overplus, if any, remaining after the payment of the costs and accruing costs and the foregoing judgment with all interest thereon, shall be paid to the Clerk of this court for the benefit of the persons lawfully entitled thereto and authorized to receive same.

6. That the defendant, PBT Investment Group, LLC, if residing on the property, or any other persons residing therein, shall vacate the real estate with ten (10) days of the sale.

7. That the United States Marshal for the Southern District of Indiana, upon consummation of said sale, may place the purchaser of said real estate in immediate possession thereof. At such time as the purchaser may request after sale of the property, the United States Marshal for the Southern District of Indiana shall evict any defendant found occupying the premises herein foreclosed and deliver possession thereof to the purchaser, by application to the court for Writ of Assistance.

8. That the United States may become a purchaser at such sale of any part of or all of the real estate and may make payment therefore with any part or all of the indebtedness found to be due herein to the United States, said indebtedness to be credited with the net amount bid by said Small Business Administration after payment of costs herein, by virtue of its real estate mortgage and lien on said real estate.

9. Should the real property sell for less than what is owed to the United States, then the United States shall have and recover a deficiency judgment against the cross-defendants and third-party defendants, PBT Investment Group, LLC, Scott K. Peachee, Patriot Title, LLC, Title Source of Indiana, Inc., and SKP Financial Group, LLC, jointly and severally, for any deficiency remaining after sale of the subject real estate and application of the proceeds, if any, to the debt of the United States.

SO ORDERED this 28th day of August 2008.

A handwritten signature in blue ink, appearing to read 'R. Young', is written over a horizontal line.

RICHARD L. YOUNG, JUDGE
United States District Court
Southern District of Indiana

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