

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CARTER DOUGLAS COMPANY, LLC	)	
	)	
_____	)	CASE NO.
	)	2019-00415
ALLEGED VIOLATION OF UNDERGROUND	)	
FACILITY DAMAGE PREVENTION ACT	)	

ORDER

On November 22, 2019, the Commission ordered Carter Douglas Company, LLC. (Carter Douglas), to submit a written response on or before December 12, 2019, to the allegations contained in the Staff Incident Report for Incident No. 21084, which was attached as an Appendix to the Commission's Order.

On November 22, 2019, the Commission received a certified copy of an Order of Possession issued against Carter Douglas by the United States District Court, Western District of Kentucky, Bowling Green Division. A copy of that Order is attached to this Order as an Appendix.

The Commission finds that the check dated July 2, 2019, a copy of which was included in the Incident Report for Incident No. 21084, and was attached to the Commission's November 22, 2019 Order, addresses to its satisfaction the probable violation cited by Staff in the Incident Report. The Commission further finds the Commission's investigation of this incident should be closed.

IT IS THEREFORE ORDERED that:

1. Carter Douglas's payment of Staff's proposed reduced penalty is accepted and resolves the alleged violation that was the subject of the Incident Report.
2. Carter Douglas's payment of Staff's proposed reduced penalty is not an admission by Carter Douglas that it willfully violated any provision of KRS Chapter 367 or any administrative regulation promulgated pursuant thereto.
3. The Commission's investigation of this incident is closed.
4. This case is closed and removed from the Commission's docket.

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By the Commission

Commissioner Talina Mathews did not participate in this case.



ATTEST:

  
Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2019-00415 DATED **DEC 11 2019**

EIGHT PAGES TO FOLLOW

CERTIFIED  
U.S. DISTRICT COURT  
BOWLING GREEN, KY  
Date: 01/11/2019  
By: [Signature]  
Deputy Clerk

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
BOWLING GREEN DIVISION

BRANCH BANKING AND TRUST COMPANY,

PLAINTIFF

vs.

CIVIL CASE NO. 1:18-cv-00085-GNS

CARTER DOUGLAS COMPANY, LLC;  
WAYNE D. CATES;  
JENNIFER CATES;  
COMMONWEALTH OF KENTUCKY, COUNTY OF LOGAN,

DEFENDANTS

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**DEFAULT JUDGMENT, JUDGMENT ON THE PLEADINGS,  
ORDER ADJUDICATING LIENS, ORDER OF SALE,  
ORDER OF POSSESSION AND ORDER OF REFORMATION**

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Plaintiff, Branch Banking and Trust Company ("BB&T"), having filed its Motion for (i) an *in personam* Default Judgment against Defendants, Carter Douglas Company, LLC ("Carter Douglas Company"), Wayne D. Cates and Jennifer Cates; (ii) a Judgment on the Pleadings against Defendant, Commonwealth of Kentucky, County of Logan; (iii) Order Adjudicating Liens; (iv) Order of Sale; (v) Order of Possession; and (vi) Order of Reformation (the "Motion"),<sup>1</sup> and the Court having been fully advised, it is hereby **ORDERED** and **ADJUDGED** as follows:

1. The Court finds that Defendants, Carter Douglas Company, Wayne D. Cates and Jennifer Cates, have been duly summoned and have failed to appear to answer in the time prescribed by law. Therefore, the Court hereby **GRANTS** the Motion;

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<sup>1</sup> Terms not defined herein shall have the meanings given them in the Complaint.

2. BB&T is **AWARDED** an *in personam* Default Judgment on Count I of the Complaint against the Defendants, Carter Douglas Company, Wayne D. Cates and Jennifer Cates, jointly and severally, in the amount of \$263,388.15, comprised of principal in the amount of \$249,438.55, interest in the amount of \$13,030.20 and late charges and other fees in the amount of \$919.40, plus interest on the principal portion thereof at the fixed rate of 15.00% per annum from July 5, 2018, until paid, plus accruing late charges, plus its attorney's fees, court costs and its expenses;

3. BB&T is further **AWARDED** an *in personam* Default Judgment on Count II of the Complaint against the Defendants, Carter Douglas Company, Wayne D. Cates and Jennifer Cates, jointly and severally, in the amount of \$82,955.10, comprised of principal in the amount of \$78,629.97, interest in the amount of \$4,107.37 and late charges in the amount of \$217.76, plus interest on the principal portion thereof at the fixed rate of 15.00% per annum from July 5, 2018, until paid, plus accruing late charges, plus its attorney's fees, court costs and its expenses;

4. BB&T is further **AWARDED** an *in personam* Default Judgment on Count III of the Complaint against the Defendants, Carter Douglas Company, Wayne D. Cates and Jennifer Cates, jointly and severally, in the amount of \$195,855.04, comprised of principal in the amount of \$185,166.68 and interest in the amount of \$10,688.36, plus interest on the principal portion thereof at the fixed rate of 15.00% per annum from July 5, 2018, until paid, plus accruing late charges, plus its attorney's fees, court costs and its expenses, if any;

5. The Court finds that nothing in the responsive pleadings filed herein by the Defendant, Commonwealth of Kentucky, County of Logan, disputes the validity or priority of BB&T's Note 9 Mortgage lien and Note 9 Assignment lien on the Property. Therefore, the Court hereby **GRANTS** the Motion;

6. To partially secure repayment of the amounts set forth in paragraphs 2, 3 and 4 above, BB&T, by virtue of its Mortgage of Real Estate lodged of record in the Office of the Logan County Clerk on June 16, 2010 in Mortgage Book 468, Page 621, Document No. 228474 (as amended and/or modified, the "Note 9 Mortgage"), is hereby **ADJUDGED** to hold a valid lien, prior and superior to all other liens, encumbrances, claims and interests, with the exception of any liens for unpaid ad valorem real property taxes properly claimed herein, on the Property;

7. To further secure repayment of the amounts set forth in paragraphs 2, 3 and 4 above, BB&T, by virtue of its Assignment of Leases and Rents lodged of record in the Office of the Logan County Clerk on June 16, 2010 in Mortgage Book 468, Page 635, Document No. 228476 (as amended and/or modified, the "Note 9 Assignment"), is hereby **ADJUDGED** to hold a valid lien, prior and superior to all other liens, encumbrances, claims and interests, with the exception of any liens for unpaid ad valorem real property taxes properly claimed herein and the Note 9 Mortgage, on the Property;

8. Should the sale of the Property bring in excess of the costs of this action, the lien for ad valorem real property taxes, and the amounts of the JUDGMENT secured by the Property granted to BB&T, the balance of the proceeds of said sale shall be held by the U.S. Marshal until such time as this Court directs disbursement of the funds retained.

9. BB&T shall be permitted to credit bid the amounts of its JUDGMENT at any foreclosure sale of the Property.

10. The Property consists of a certain lot with improvements thereon and the same is not capable of being divided without materially impairing the value of the Property or the value of the interest of BB&T or the Defendants herein and the Property is **ORDERED** sold as a whole, free and clear of all liens with the proceeds of sale, after payment of costs, expenses of

sale and all delinquent property taxes for prior tax years, if any be due, then to apply to the satisfaction of the debt, interest and costs of BB&T.

11. **IT IS FURTHER ORDERED AND ADJUDGED** that the U.S. Marshal shall sell the Property, at public sale to be held at the 241 East Main Street, Bowling Green, Kentucky 42101 (the "Courthouse"), on a day to be fixed by the U.S. Marshal, upon the following terms and conditions:

A. Before conducting the sale the U.S. Marshal shall advertise the time, terms and place of sale, together with a description of the Property to be sold, by written notice posted, one conspicuously placed at the Courthouse door, and one in the vicinity of the Property, also by publication in the daily newspaper of the largest circulation in Logan County, Kentucky at least once a week for four successive weeks prior to the sale, all in compliance with KRS 424.130 and 28 U.S.C. § 2002. The advertisement shall include: (a) the time, place and terms of sale; (b) a reference to the judgment and order of sale; and (c) a description of the property to be sold, which shall include only the street address and any numbers assigned to the property/parcel by the tax assessor for the purpose of identification and record keeping such as the parcel or property identification number;

B. The U.S. Marshal before making the sale shall have the Property appraised by two intelligent, disinterested housekeepers of Logan County, Kentucky who are actively engaged in or have had at least one year of experience in the field of real estate and who are not related to any parties to the action. The appraisers shall be duly sworn. They shall return their appraisals in writing to the U.S. Marshal who shall file same as part of the record prior to the sale;



C. The U.S. Marshal shall conduct the sale of the Property at the Courthouse on a date and time to be determined by the U.S. Marshal. The sale shall be made to the respective highest and best bidder(s) and the sale shall be for cash, or in the alternative, the U.S. Marshal will take from the purchaser(s), ten percent of the purchase price in cash, due and payable at the time of sale, and the balance due and payable within thirty (30) days, with the purchaser to be required to execute bond with surety thereon to be approved by the U.S. Marshal to secure the unpaid portion of the purchase price. Said bond shall bear interest at the rate of 12% per annum from the day of the sale until paid in full and shall have the same force and effect as a Judgment and shall remain a prior and superior lien on the Property until fully paid. Upon default of said payment by the purchaser, the U.S. Marshal shall immediately resell the Property upon the said terms and conditions set out herein;

D. Said Property shall be sold free and clear of all liens, encumbrances and interest of the parties hereto, except sold subject to: (i) ad valorem taxes due on sale date; (ii) easements, restrictions and stipulations of record affecting said property; (iii) any matters disclosed by an accurate survey or inspection of the Property; and (iv) any assessment for public improvements levied against the Property. Provided, however, neither BB&T, the U.S. Marshal, nor the Court shall be deemed to have warranted title of said real estate to the purchaser(s);

E. A party, who is the successful purchaser of the Property, may take credit against any judgment in that party's favor against the defendant property owner for the required deposit and purchase price to the extent that the sale price is sufficient to pay such judgment considering the priorities and amounts previously adjudicated in this action;

F. Upon confirmation of the sale, the U.S. Marshal is hereby ordered to issue a Deed conveying the interests of the Defendants in the Property to the successful purchaser(s); and

G. Defendants, after the sale, or any person holding under them, is no longer entitled to possession of the Property, and the Defendants or any persons holding under them are ordered to vacate the premises upon confirmation.

12. To further secure repayment of the amounts set forth in paragraph 4 above, BB&T is hereby **ADJUDGED** to have a valid and enforceable security interest in the Collateral and the Truck, and is hereby awarded immediate possession of the Collateral and Truck;

13. The Defendants are hereby **ORDERED** to deliver the Collateral and the Truck to BB&T and, in the event said Collateral and Truck are not delivered to BB&T immediately after the entry date of this JUDGMENT, upon the direction of counsel for BB&T, the U.S. Marshal is hereby **ORDERED** and **DIRECTED** to seize the Collateral and the Truck and immediately deliver possession thereof to BB&T;

14. The Note 9 Mortgage and the Note 9 Assignment are hereby **REFORMED** to correctly reflect the lot number in the legal description for the Property as "Lot 5" and as more fully described in Count IV of the Complaint;

15. BB&T is hereafter **PERMITTED** to record a copy of this Order with the Office of the Logan County Clerk, and the Office of the Logan County Clerk shall accept a copy of this Order, to effect a reformation of the Note 9 Mortgage and the Note 9 Assignment;

16. There being no just cause for delay, this is a final and appealable Order and Judgment;

17. All forms of execution and enforcement of this Judgment may issue forthwith;  
and

18. The right is reserved to the BB&T to make later claims as permitted by Note 9, Note 9 Mortgage, Note 9 Assignment, Note 9 Guarantees, Note 12, Note 12 Guarantees, Note 21, Note 21 CSA, Note 21 Guarantees and state and federal laws including for amounts advanced to maintain the Property for taxes, insurance, assessments, sums expended pursuant to KRS § 426.525, and other levies and costs paid by BB&T, and for its reasonable attorneys' fees expended.



Greg N. Stivers, Chief Judge  
United States District Court

January 10, 2019

**U.S. District Court**  
**Western District of Kentucky**

**Notice of Electronic Filing**

The following transaction was entered on 1/11/2019 at 12:25 PM EST and filed on 1/11/2019

**Case Name:** Branch Banking & Trust Company v. Carter Douglas Company, LLC et al

**Case Number:** 1:18-cv-00085-GNS

**Filer:**

**Document Number:** 35

**Docket Text:**

**DEFAULT JUDGMENT, JUDGMENT ON THE PLEADINGS, ORDER ADJUDICATING LIENS, ORDER OF SALE, ORDER OF POSSESSION AND ORDER OF REFORMATION Signed by Chief Judge Greg N. Stivers on 1/10/2019 granting [27] Motion for Default Judgment. Parties shall comply as set forth in Order. cc: Counsel, USM-Paper(MEJ)**

**1:18-cv-00085-GNS Notice has been electronically mailed to:**

Martin B. Tucker martin.tucker@dinsmore.com, natalie.kissinger@dinsmore.com, rosetta.mitchell@dinsmore.com, sarah.mattingly@dinsmore.com

Clay J. Lamb clayj.lamb@ky.gov

Joseph E. Ross joeross210@yahoo.com, bethgoodman1211@bellsouth.net

Sarah S. Mattingly sarah.mattingly@dinsmore.com, teresa.rice@dinsmore.com

Joshua R. Hurley joshua.hurley@ky.gov

**1:18-cv-00085-GNS Notice will not be electronically mailed to.:**

Wayne D. Cates  
2705 N. 197 Rd.  
Beggs, OK 74421

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1036078947 [Date=1/11/2019] [FileNumber=3307781-0] [99de978f95089eff0f01a1317c7d4ca53e5d2406b9d8c2e8faef02bcc7493774d786c030eb5ab14b368b43b85d1105fa6a339b12c5fc85ea4c454a3728b7d45b]]

Jennifer Cates  
2705 N. 197 Road  
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\*Wayne Cates  
1229 Herndon Road  
Russellville, KENTUCKY 42276