

CITY OF MADISON, WISCONSIN

REPORT OF THE CITY ATTORNEY

AUTHOR: Michael P. May, City Attorney

DATED: September 24, 2013

TO THE MAYOR AND COMMON COUNCIL:

RE: Legistar File No. 31407
A Resolution Approving the Assignment of seven (7) judgments against 216
State Street, LLC to Music Lovers, LLC

At its meeting on September 17, 2013, the Council referred this matter to the City Attorney for a report and recommendation to be made at the October 1 meeting.

As proposed, the City would have entered into an agreement with Music Lovers, LLC to assign its judgments and be paid \$75,000. Prior to the meeting, Orpheus, LLC, offered to pay the City the full value of those judgments, about \$141,000 plus accrued interest to total approximately \$162,000. At the meeting, Music Lovers, LLC offered to match the offer of Orpheus, LLC.

The principals behind Music Lovers, LLC (and some other LLCs) are the Frank brothers, who are operating the Orpheum right now under an agreement with the court-appointed receiver, attorney Rebecca DeMarb. The principal behind Orpheus, LLC (and some other LLCs) is Gus Paras. Rather than referring to the various LLCs or other business entities, when it involves the Franks or Paras, we will refer to them.

Background.

There are several lawsuits related to the Orpheum. One is in Waukesha County, which resulted in a bid on the Orpheum to pay off debts of the former owners. Gus Paras was the successful bidder in that case, but the court case is stayed due to the other litigation in Dane County.

The key lawsuit for the City's consideration is the ongoing foreclosure of the Orpheum. Monona State Bank started this lawsuit to recover amounts it loaned to 216 State Street, LLC, and to remove any other liens on the property. Because of the judgments the City owns, it is named as a defendant in the lawsuit. Normally, a foreclosure

proceeds to a Sheriff's sale, and the City, as a junior lien-holder, rarely gets paid anything, much less the full value of the judgments. After a Sheriff's sale, all liens are removed from the property, which essentially has a fresh start in the hands of the high bidder at the sale.

The City Attorney was approached in mid-March by the Franks to purchase the City's judgments and associated junior liens. We examined the other liens on the property and determined, given our lien positions, it was unlikely we would be paid in full at a Sheriff's sale, and thus reached a tentative agreement with the Franks to assign the City's judgments for \$75,000. When this tentative agreement was reached, it was put into a resolution, introduced at the September 3 Council meeting, and referred to BOE, where it was approved on the consent agenda on September 9. We received the letter and proposal from Paras, through attorney Haus, on September 16, the day before the matter was on the Council's agenda.

At about the same time, Attorney Roger Sage, representing another LLC (State Street Resources, LLC) had called the City Attorney's office between September 3 and September 10, wanting to bid on the assignment of the judgments. Our office was not aware who was the principal behind this LLC and we were not informed by Mr. Sage. The attorney was informed that we had a tentative deal with the Franks, negotiated in good faith, and the process by which that was being presented to the Common Council. We have since learned that the LLC represented by Mr. Sage was another one controlled by Mr. Paras. Until the City received the letter from attorney Haus on September 16, we had no other offer to buy our judgments.

Now, both Paras and the Franks (in testimony on September 17) have offered to pay the full value of the City's judgments.

In the meantime, in August, 2013, the Franks (through another LLC) purchased the lien of a junior lien holder and used procedures under Wisconsin law to purchase the interests of the Monona State Bank. Thus, the Franks now hold the first lien on the Orpheum. This puts them in a better position at any Sheriff's sale. See the attached copy of the court order approving this transfer of the first mortgage.

We do not believe that Paras has obtained any junior liens on the Orpheum. Nor have we researched whether, if he were to obtain such liens, he could use the same procedures used by the Franks to buy out the Monona State Bank, and buy out the Franks, and assume the first lien.

The period of redemption on the Orpheum runs in November, 2013, and the Sheriff's sale could be scheduled any time after that. There are other hearings in the foreclosure, and perhaps in other lawsuits related to the property, between now and November.

Recommendation.

The Council has two options.

First, the Council could place on the file the proposal to sell our judgments. This would be a way to maintain complete neutrality between the Franks and Paras. The City would then be taking its chances that the bidding at a Sheriff's sale would be sufficient to pay the judgments in full.

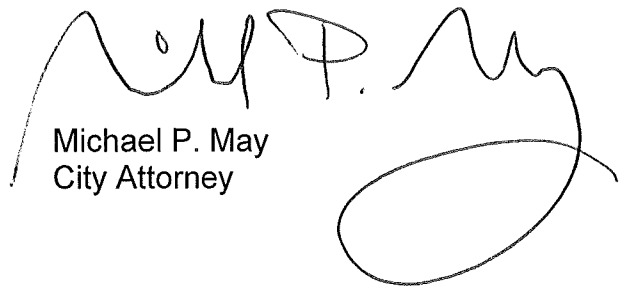
We do not recommend pursuing this option because anything might happen, given all the litigation surrounding the Orpheum. We cannot estimate when or even if the Sheriff's sale might occur, nor can we determine whether there will be a surplus to pay the City's judgments. The bird in hand seems much more appropriate.

Second, the Council could choose to accept the offer of the Franks, or the offer of Paras. The pending resolution could be amended on October 1 to match the decision made by the Council. There are many factors the Council could consider in deciding between the two offers, and we expect that representatives of both parties will appear at the meeting on October 1 to present their positions.

The City Attorney takes no position on which offer to accept. Our office advised the two bidders to submit their final offer to the Office of the City Attorney before 4:30 pm on Friday, September 27, to the attention of Deputy City Attorney Patricia Lauten. This information will be forwarded to you before the meeting on Tuesday, October 1.

I am out of the state on October 1, and DCA Lauten will be covering the Council meeting.

Respectfully submitted,



Michael P. May
City Attorney

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 2

DANE COUNTY

MONONA STATE BANK

Case No. 12 CV 3615

Plaintiff,

Case Code: 30404

vs.

(Foreclosure of Mortgage)

216 STATE STREET, LLC, et al.,

Defendants,

JET'M ONE, LLC,

Added Defendant.

**ASSIGNMENT OF LOAN DOCUMENTS & JUDGMENT AND
STIPULATION & ORDER FOR SUBSTITUTION
OF PARTY PLAINTIFF**

WHEREAS, the Court entered the Findings of Fact and Conclusions of Law as well as Judgment (collectively, "Judgment") in the above-entitled action (the "Action") on May 3, 2013, in favor of Monona State Bank ("Plaintiff") and against the Defendants; and

WHEREAS, Defendant Sold Out, LLC holds a subordinate lien against the subject premises by virtue of its docketed judgment lien; and

WHEREAS, Sold Out, LLC has elected to proceed under Wis. Stat. §§ 846.02 and 846.15 and desires to pay to the Plaintiff all sums due under said Judgment in exchange for the right to be subrogated to all rights of Plaintiff in and under said Judgment; and

WHEREAS, Plaintiff has agreed, and has acknowledged its obligation under Wis. Stat. §§ 846.02 and 846.15, to assign to Sold Out, LLC, completely and absolutely, all of its rights and interests in and under the Judgment entered therein; and

WHEREAS, Plaintiff has further agreed, and has further acknowledged its obligation under Wis. Stat. §§ 846.02 and 846.15, to assign to Sold Out, LLC, the corresponding loan documents, including, but not limited to, those defined in paragraphs 19 through 25 of the Findings of Fact component of the Judgment (the "Loan Documents"); and

WHEREAS, Plaintiff has agreed, and has acknowledged its obligation under Wis. Stat. §§ 846.02 and 846.15, to assign all of the above-described rights and interests to Sold Out, LLC in exchange for good and valuable consideration, the receipt of which is hereby acknowledged;

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

1. The above recitals are incorporated herein by reference as though fully set forth.
2. Sold Out, LLC has paid to Monona State Bank fair value of said assignment, the sufficiency of which is hereby acknowledged; concurrently with the execution of this Assignment, the parties also executed additional agreements, negotiated and contemplated by the parties, that further delineate the details of the contemplated assignment of the Loan Documents and Judgment and the subrogation of all rights as Plaintiff in this Action.
3. Monona State Bank assigned to Sold Out, LLC, completely and absolutely, and without recourse, all rights and interests of Plaintiff in and under the Judgment entered May 3, 2013, in the Action.
4. Monona State Bank further assigned to Sold Out, LLC, without recourse, the Loan Documents.
5. Sold Out, LLC shall be subrogated to all of the rights of Plaintiff in and under said Loan Documents and Judgment in the above-captioned matter.
6. Sold Out, LLC shall be substituted as the named party Plaintiff in the above-captioned action, with full authority and right to prosecute the Action.

Dated this 19th day of August, 2013.

MONONA STATE BANK

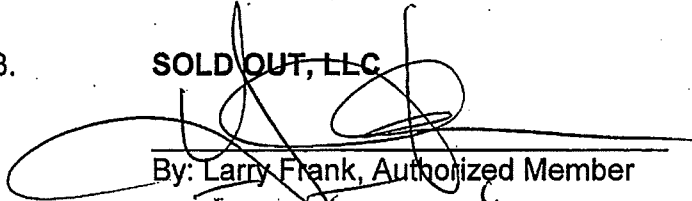


By: PETER M. GRAVEN

Title: SENIOR VICE PRESIDENT

Dated this 19th day of August, 2013.

SOLD OUT, LLC



By: Larry Frank, Authorized Member



By: Fred Frank, Authorized Member

AS TO FORM:

EUSTICE, LAFFEY, SEBRANEK & AUBY, S.C.

Dated: August 19th, 2013



Kimberly P. Sebranek
State Bar No. 1031923
Attorney for Sold Out, LLC
100 Wilburn Rd., Ste. 202
P.O. Box 590
Sun Prairie, WI 53590-0590
(608) 837-7386

MURPHY DESMOND S.C.

Dated: August 19, 2013



Jane F. Zimmerman
State Bar No. 1012103
Attorney for Monona State Bank
33 East Main Street, Suite 500
Madison WI 53701-2038
(608) 257-7181

ORDER

In accordance with Wis. Stat. §§ 846.02 and 846.15, and upon the above Stipulation;

IT IS HEREBY ORDERED that the terms of said Stipulation are hereby an Order of this Court, effective immediately, including, but not limited to:

1. Sold Out, LLC is hereby subrogated to all the rights of Plaintiff in and under the Loan Documents and Judgment in the above-captioned action.
2. Sold Out, LLC shall henceforth be substituted as party Plaintiff in the above-captioned action with the right and authority to prosecute the action.

Dated this 27th day of August, 2013.

BY THE COURT:

/s/
Honorable Maryann Sumi
Circuit Court Judge