

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION

UNITED BANK, INC., a West Virginia
banking corporation,

Plaintiff,

v.

Civil Action No.: 14-C-571
Presiding Judge: Hon. James J. Rowe
Resolution Judge: Hon. Paul T. Ferrell

CLARENCE E. WHITE, an individual;
BLAIR WHITE, an individual;
GLENN RUNYAN, an individual;
KBW, Inc., a West Virginia corporation;
CLEDENIN PLACE REALTY, LLC, a West Virginia limited liability company,
successor by merger with Clendenin Place, Inc.;
WHITE DODGE, INC., a West Virginia corporation;
SHASTA AVIATION, INC., a Florida corporation;
AIR SUPPORT RESOURCES, LLC, a Florida limited liability company; and
CYDNEY REALTY, INC., a West Virginia corporation;

Defendants.

PARTIAL JUDGMENT ORDER

This day came the Plaintiff, United Bank, Inc. ("United" or "Plaintiff"), by counsel, and requested that this Court enter a partial judgment in this matter determining the amounts due and owing to United by Defendants Clarence E. White ("C.E. White"), KBW, Inc. ("KBW"), Clendenin Place Realty, LLC ("Clendenin Place"), White Dodge, Inc. ("White Dodge"), Shasta Aviation, Inc. ("Shasta"), Air Support Resources, LLC ("Air Support"), and Cydney Realty, Inc. ("Cydney Realty") (collectively, the "Defendants"),¹ on various loan documents and guaranties that are the subject of this litigation.

¹ This Court notes that defendants Blair White and Glenn Runyan have filed bankruptcy petitions and received discharges since the institution of this action. At the request of United, this Court does hereby **DISMISS** United's claims against Blair White and Glenn Runyan *without* prejudice pursuant to Rule 41 of the West Virginia Rules of Civil Procedure.

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CATHY S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

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After consideration of United's request and the record in this matter, this Court finds and concludes as follows:

1. By Order dated May 6, 2015, this Court granted United's motions regarding the liability of the Defendants on the various loan documents and guaranties that comprise this action. Specifically, this Court found that none of the Defendants responded to United's motions for summary judgment or otherwise substantiated any legal defenses to their respective liabilities. This Court further found that there were no genuine issues of material fact relevant to a conclusion that Defendants were liable on each of their respective loans and/or guaranties. Accordingly, this Court concluded that "each of the Defendants owes to United an amount of money, to be determined by this Court, under the various instruments and documents that form the basis for United's complaint." [Or. at p. 2.]

2. With respect to White Note 1 [Compl. at Count I], during the pendency of this lawsuit, United was fully satisfied with respect to the obligations arising under White Note 1.

3. Pursuant to the terms of White Note 2 [*id.* at Count II], C. E. White owes Plaintiff the amount of \$78,960.56 in principal and \$6,106.28 in accrued interest as of June 16, 2015, plus interest which continues to accrue on the outstanding principal balance of White Note 2 at \$8.7734 per diem.

4. With respect to the KBW Note [*id.* at Count III], during the pendency of this lawsuit, United was fully satisfied with respect to the obligations arising under the KBW Note.

5. With respect to White Note 3 [*id.* at Count IV], during the pendency of this lawsuit, United was fully satisfied with respect to the obligations arising under White Note 3.

6. Pursuant to the terms of White Note 4 [*id.* at Count VI], C. E. White owes Plaintiff the amount of \$4,490,054.51 in principal, \$300.00 in late fees and \$336,664.87 in accrued interest as of June 16, 2015, plus interest which continues to accrue on the outstanding principal balance of White Note 4 at \$498.8949 per diem. Due to the pendency of a Florida foreclosure relating to collateral supporting White Note 4, this Court withholds its final judgment on these amounts until such time that the Florida foreclosure action has terminated and final amounts can be determined.

7. Pursuant to the terms of Shasta Aviation Note 1 [*id.* at Count VII], C. E. White, owes Plaintiff the amount of \$2,001,102.45 in principal, \$200.00 in late fees and \$147,025.44 in accrued interest as of June 16, 2015, plus interest which continues to accrue on the outstanding principal balance of Shasta Aviation Note 1 at \$277.9309 per diem.

8. Pursuant to the terms of White Note 5 [*id.* at Count VIII], C. E. White owes Plaintiff the amount of \$697,697.58 in principal and \$56,048.38 in accrued interest as of June 16, 2015, plus interest which continues to accrue on the outstanding principal balance of White Note 5 at \$77.5220 per diem. Due to the pendency of a Florida foreclosure relating to collateral supporting White Note 5, this Court withholds its final judgment on these amounts until such time that the Florida foreclosure action has terminated and final amounts can be determined.

9. Pursuant to the terms of White Note 6 [*id.* at Count IX], C. E. White owes Plaintiff the amount of \$2,225,000.01 in principal, \$300.00 in late fees and \$178,741.67 in accrued interest as of June 16, 2015, plus interest which continues to accrue on the outstanding principal balance of White Note 6 at \$247.2222 per diem. Due to the pendency of a Florida foreclosure relating to collateral supporting White Note 6, this Court withholds its final judgment on these

amounts until such time that the Florida foreclosure action has terminated and final amounts can be determined.

10. With respect to White Note 7 [*id.* at Count X], during the pendency of this lawsuit, United was fully satisfied with respect to the obligations arising under White Note 7.

11. With respect to White Note 8 [*id.* at Count XI], during the pendency of this lawsuit, United was fully satisfied with respect to the obligations arising under White Note 8.

12. Pursuant to the terms of Shasta Note 2 [*id.* at Count XII], C. E. White owes Plaintiff the amount of \$60,000.00 in principal, \$90.00 in late fees and \$5,991.67 in accrued interest as of June 16, 2015, plus interest which continues to accrue on the outstanding principal balance of Shasta Note 2 at \$8.3333 per diem.

13. Pursuant to the terms of the 2004 C. E. White Guaranty [*id.* at Count XIII], C. E. White owes Plaintiff the amount of \$2,062,409.67 in principal, \$835.31 in late fees and \$153,105.77 in accrued interest as of June 16, 2015, plus interest which continues to accrue on the outstanding principal balance of Blair White Note 1², Shasta Note 1 and Shasta Note 2 at the interest rates set forth in each note, plus attorneys' fees and collection costs.

14. Pursuant to the terms of the 2006 Shasta Guaranty [*id.* at Count XIV], Shasta owes Plaintiff the amount of \$9,554,122.33 in principal, \$1435.31 in late fees and \$730,666.96 in accrued interest as of February 21, 2014, plus interest which continues to accrue on the outstanding principal balances of (a) White Note 1, (b) White Note 2, (c) White Note 3, (d) White Note 4, (e)

² Pursuant to the terms of Blair White Note 1 [*id.* at Count V], Blair White owes Plaintiff the amount of \$1,307.22 in principal, \$545.31 in late fees and \$88.66 in accrued interest as of June 16, 2015, plus interest which continues to accrue on the outstanding principal balance of Blair White Note 1 at \$0.1180 per diem. United has dismissed its claims against Blair White, but pursues collection of amounts due and owing on Blair White Note 1 by virtue of various guaranty agreements.

Shasta Note 1, (f) White Note 5, (g) White Note 6, (h) White Note 7, (i) White Note 8, (j) Shasta Note 2 (the foregoing notes are collectively referred to herein as, the "Notes") and Blair White Note 1.

15. Pursuant to the terms of the 2006 Air Support Guaranty [*id.* at Count XV], Air Support owes Plaintiff the amount of \$9,554,122.33 in principal, \$1435.31 in late fees and \$730,666.96 in accrued interest as of June 16, 2015, plus interest which continues to accrue on the outstanding principal balance of the Notes and Blair White Note 1 at the interest rates set forth in each note, plus attorneys' fees and collection costs.

16. Pursuant to the terms of the 2006 Cydney Realty Guaranty [*id.* at Count XVI], Cydney Realty owes Plaintiff the amount of \$9,554,122.33 in principal, \$1435.31 in late fees and \$730,666.96 in accrued interest as of June 16, 2015, plus interest which continues to accrue on the outstanding principal balances of each of the Notes and Blair White Note 1 at the interest rates set forth in each note, plus attorneys' fees and collection costs.

17. Pursuant to the terms of the 2006 KBW Guaranty [*id.* at Count XVII], KBW owes Plaintiff the amount of \$9,554,122.33 in principal, \$1435.31 in late fees and \$730,666.96 in accrued interest as of June 16, 2015, plus interest which continues to accrue on the outstanding principal balances of each of the Notes and Blair White Note 1 at the interest rates set forth in each note, plus attorneys' fees and collection costs.

18. Pursuant to the terms of the 2008 KBW Guaranty [*id.* at Count XVIII], KBW owes Plaintiff the amount of \$9,552,815.11 in principal, \$890.00 in late fees and \$730,578.30 in accrued interest as of June 16, 2015, plus interest which continues to accrue on the outstanding

principal balance of the Notes at the interest rate set forth in each note, plus attorneys' fees and collection costs.

19. Pursuant to the terms of the 2009 KBW Guaranty [*id.* at Count XIX], KBW owes Plaintiff the amount of \$9,552,815.11 in principal, \$890.00 in late fees and \$730,578.30 in accrued interest as of June 16, 2015, plus interest which continues to accrue on the outstanding principal balance of the Notes at the interest rate set forth in each note, plus attorneys' fees and collection costs.

20. Pursuant to the terms of the 2013 KBW Guaranty [*id.* at Count XX], KBW owes Plaintiff the amount of \$9,554,122.33 in principal, \$1435.31 in late fees and \$730,666.96 in accrued interest as of June 16, 2015, plus interest which continues to accrue on the outstanding principal balances of each of the Notes and Blair White Note 1 at the interest rates set forth in each note, plus attorneys' fees and collection costs.

21. Pursuant to the terms of the 2008 Clendenin Place Guaranty [*id.* at Count XXI], Clendenin Place owes Plaintiff the amount of \$9,552,815.11 in principal, \$890.00 in late fees and \$730,578.30 in accrued interest as of June 16, 2015, plus interest which continues to accrue on the outstanding principal balance of the Notes at the interest rate set forth in each note, plus attorneys' fees and collection costs.

22. Pursuant to the terms of the 2009 Clendenin Place Guaranty [*id.* at Count XXII], Clendenin Place owes Plaintiff the amount of \$9,552,815.11 in principal, \$890.00 in late fees and \$730,578.30 in accrued interest as of June 16, 2015, plus interest which continues to accrue on the outstanding principal balance of the Notes at the interest rate set forth in each note, plus attorneys' fees and collection costs.

23. Pursuant to the terms of the 2009 White Dodge Guaranty [*id.* at Count XXIII], White Dodge owes Plaintiff the amount of \$9,552,815.11 in principal, \$890.00 in late fees and \$730,578.30 in accrued interest as of June 16, 2015, plus interest which continues to accrue on the outstanding principal balance of the Notes at the interest rate set forth in each note, plus attorneys' fees and collection costs.

WHEREFORE, it is **ORDERED** and **ADJUDGED** that judgment be, and it is hereby, entered against the above-referenced Defendants as follows:

(A) White Note 1 - Plaintiff's claim with respect to White Note 1 is hereby **DISMISSED** with prejudice;

(B) White Note 2 - Plaintiff is hereby awarded judgment against Defendants C.E. White, Shasta Aviation, Air Support, Cydney Realty, KBW, Clendenin Place, and White Dodge, including principal, accrued interest and late fees, in the amount of \$85,066.84, plus interest which continues to accrue on the outstanding principal balance of White Note 2 in the amount of \$8.77 per day, plus post-judgment interest thereon at the rate of seven percent (7%) per annum until satisfied;

(C) KBW Note - Plaintiff's claim with respect to the KBW Note is hereby **DISMISSED** with prejudice;

(D) White Note 3 - Plaintiff's claim with respect to White Note 3 is hereby **DISMISSED** with prejudice;

(E) Blair White Note 1 - Plaintiff is hereby awarded judgment against Defendants C.E. White, Shasta Aviation, Air Support, Cydney Realty, and KBW including principal, accrued interest and late fees, in the amount of \$1941.19, plus interest which continues to accrue on the

outstanding principal balance of Blair White Note 1 in the amount of \$0.1180 per day, plus post-judgment interest thereon at the rate of seven percent (7%) per annum until satisfied;

(F) Shasta Aviation Note 1 - Plaintiff is hereby awarded judgment against Defendants C.E. White, Shasta Aviation, Air Support, Cydney Realty, KBW, Clendenin Place, and White Dodge, including principal, accrued interest and late fees, in the amount of \$2,148,327.89, plus interest which continues to accrue on the outstanding principal balance of Shasta Aviation Note 1 in the amount of \$277.9309 per day, plus post-judgment interest thereon at the rate of seven percent (7%) per annum until satisfied;

(G) White Note 7 - Plaintiff's claim with respect to White Note 7 is hereby **DISMISSED** with prejudice;

(H) White Note 8 - Plaintiff's claim with respect to White Note 8 is hereby **DISMISSED** with prejudice;

(I) Shasta Aviation Note 2 - Plaintiff is hereby awarded judgment against Defendants C.E. White, Shasta Aviation, Air Support, Cydney Realty, KBW, Clendenin Place, and White Dodge, including principal, accrued interest and late fees, in the amount of \$66,081.67, plus interest which continues to accrue on the outstanding principal balance of White Note 2 in the amount of \$8.3333 per day, plus post-judgment interest thereon at the rate of seven percent (7%) per annum until satisfied; and


The objections and exceptions of any party adversely affected by this order are hereby noted and preserved.

The Clerk is hereby DIRECTED to forward a certified copy of this order to all counsel of record.

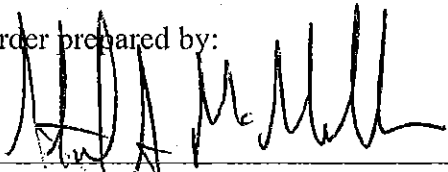
SO ORDERED.

ENTERED:

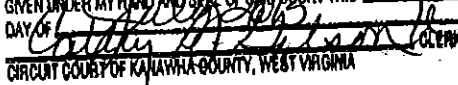
July 24, 2015



Hon. James J. Rowe

Order prepared by:



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STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 30
DAY OF July 2015
 CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

Date: 7/30/15
Certified copies sent to:
☒ counsel of record
☒ parties SM
☒ other SWC MF
(Please indicate)
By: ☒ certified/1st class mail
☐ fax
☐ hand delivery
☐ interdepartmental
Other directives accomplished:

Deputy Circuit Clerk