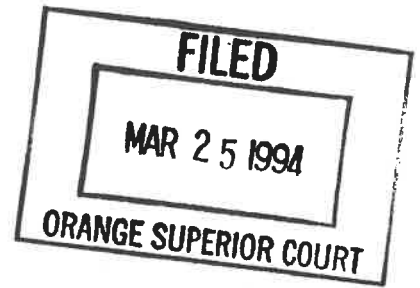


STATE OF VERMONT
ORANGE COUNTY, SS



The Howard Bank, N.A.

Orange Superior Court

v.

Donald B. Valentine, Jr.,
Lynore A. Bolton,
New England Rail Service, Inc.,
Grace Valentine, and
Green Mountain Press, Inc.

Docket No. S186-92 OeC

Decision on Accounting

This matter came before the court on December 29, 1993 for a hearing on accounting pursuant to the court's order filed September 16, 1993. Plaintiff was represented by Donna Russo-Savage, Esq. Defendants Donald B. Valentine, Jr. and Lynore A. Bolton represented themselves pro se.

Based on the credible evidence, the court finds as follows:

1. As of November 4, 1993, the principal balance owed on the loan was \$57,684.20.
2. As of November 4, 1993, interest owed was \$4,162.35.
3. Court costs are \$160.00.
4. Per diem interest is \$13.83 commencing November 5, 1993.
5. Defendants failed to name the plaintiff as loss payee on its property insurance policy as required by the terms of the mortgage deed dated October 14, 1986. After being notified of the requirement to do so, Defendant Donald B. Valentine, Jr. refused to do so, and the other defendants failed to do so. The bank obtained insurance coverage on its own in December 1990. In early 1991, the bank through its agents wrote Defendant Valentine two letters requesting that he obtain insurance coverage and pay the cost of the insurance obtained by the bank. Defendant Valentine then clearly stated in writing that he would not do so unless the bank cooperated with a condition that was not

included in the mortgage deed in which the requirement was created. The bank maintained coverage through its separate arrangement. The bank has spent \$1,304.13 on insurance premiums through December 23, 1993. Plaintiff bank is entitled to recover this amount in this action.

6. Plaintiff bank is entitled to reasonable attorneys fees under paragraph 16 of the mortgage deed. Plaintiff has incurred the following amounts in attorneys fees and related expenses in pursuing this action:

	<u>Fees</u>	<u>Expenses</u>
8-28-92 to 10-31-93	\$8,501.50	\$591.31
11-1-93 to 12-28-93	1,713.00	19.86
12-29-93	<u>900.00</u>	<u> </u>
TOTAL	\$11,114.50	\$611.17

Such fees and expenses are reasonable fees in relation to the work required to be performed in connection with this action, in which Defendant Valentine has filed counterclaims, has appeared pro se, and has raised numerous issues requiring the preparation of memoranda, motions, responses to motions, and affidavits as well as representation at several hearings. The rates at which the fees were charged, \$110 per hour for attorney time with lower rates for work by associates and paralegals, are reasonable for the type of services and the community.

Based on the foregoing findings and the court's consideration of the applicable law, the court concludes that although some of the legal work done by Plaintiff's attorney was done in connection with the counterclaim which the court has severed from this foreclosure action because the Defendant has demanded trial by jury, such fees are properly charged against Defendants as a component of reasonable attorneys fees in this action. Defendant Valentine chose to assert the counterclaim in connection with this action and raised it

as a defense. Thus it was necessary for the Plaintiff to address it in this action. The court has analyzed the issue in this case in relation to the four factors set forth in Wright v. Doolin, 158 Vt. 317 (1992) and concludes that all four factors are present in this case, thereby entitling Plaintiff to recover attorneys fees attributable to the counterclaims as well as the plaintiff's complaint.

For the foregoing reasons, it is hereby ORDERED:

Plaintiff is entitled to judgment with an accounting based on the foregoing findings. The clerk shall prepare the accounting.

Mary Miles Teachout
Mary Miles Teachout
Superior Judge

3-25-14