

At IAS Part 39 of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse thereof, 60 Centre Street, New York, New York, on the 23rd day of December, 2009

PRESENT:

Honorable **BARBARA R. KAPNICK**
J.S.C. J.S.C.

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CREDIT SUISSE, CAYMAN ISLANDS BRANCH, as :
Administrative and Collateral Agent, :
 :
 :
Plaintiff, :
 :
- against - :
 :
GINN-WEST END GP, LLC; LUBERT-ADLER REAL :
ESTATE FUND IV, L.P.; LUBERT-ADLER REAL :
ESTATE PARALLEL FUND IV, L.P.; LUBERT-ADLER :
CAPITAL REAL ESTATE FUND IV, L.P.; ERG :
ENTERPRISES, LP; GINN-LA CS BORROWER, LLC; :
GINN-LA CONDUIT LENDER, INC.; GINN-LA CS :
HOLDING COMPANY, LLC; GINN-LA WEST END :
LTD., LLLP; GINN-LA WEST END, LIMITED; :
LUBERT-ADLER REAL ESTATE FUND III, L.P.; :
LUBERT-ADLER REAL ESTATE PARALLEL FUND :
III, L.P.; LUBERT-ADLER CAPITAL REAL ESTATE :
FUND III, L.P.; WILMINGTON TRUST FSB; "JOHN :
DOES # 1-100," the names of the JOHN DOE being :
fictitious and unknown to Plaintiff, Plaintiff intending to :
designate thereby persons or parties having or claiming to :
have an interest the described equity interest, :
 :
Defendants. :
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Index No. 601622/2009

[PROPOSED] *Order and*
JUDGMENT OF
FORECLOSURE AND SALE

Upon the Summons and Verified Complaint filed in this Action on May 22, 2009,
and the Stipulations of Foreclosure entered into between Plaintiff and each of the Defendants in

August and September 2009,¹ whereby each of the Defendants: (1) acknowledged and admitted proper service of the Summons and Verified Complaint; (2) waived its right to assert defenses based on personal jurisdiction; (3) waived its right to serve and/or file an Answer to the Verified Complaint or to assert any defenses or counterclaims in this Action; (4) consented to the entry of a judgment of foreclosure and sale in this Action and waived its right to object to such a judgment; (5) confessed and admitted that the aggregate amount due to Plaintiff totals: (i) principal in the amount of \$430,487,184.94; (ii) interest thereon through August 20, 2009 in the amount of \$52,634,438.64; and (iii) interest thereon commencing August 21, 2009, at a per diem rate of \$91,404.49 (collectively, the "Aggregate Indebtedness"); (6) waived its right to a hearing before a referee to compute by virtue of its aforementioned confessions; and (7) consented to the entry of a judgment of foreclosure and sale, including a judgment for the Aggregate Indebtedness;

Now, upon reading and filing the Motion of Plaintiff Credit Suisse, Cayman Islands Branch for entry of a Judgment of Foreclosure and Sale in this Action, and the Affirmation of Christopher P. Malloy (and exhibits annexed thereto) in support of Plaintiff's Motion, it is:

ORDERED ~~ADJUDGED AND DECREED~~ that the Aggregate Indebtedness as stipulated by the parties, consisting of: (i) principal in the amount of \$430,487,184.94; (ii) interest thereon through August 20, 2009 in the amount of \$52,634,438.64; and (iii) interest thereon commencing August 21, 2009, through and including the date of the entry of this judgment, at a per diem rate of \$91,404.49, in an amount totaling \$ 11,973,988¹⁹, is due ✓

¹ Defendant Wilmington Trust FSB ("Wilmington") is named in this Action solely in its capacity as a second-lien administrative agent and collateral agent.

to Plaintiff and that Plaintiff has a good and valid first lien on the West End Entity Interests (as defined in the Verified Complaint and described in Schedule A attached hereto) securing the payment of such amount; it is further:

ORDERED, ~~ADJUDGED AND DECREED~~ that the West End Entity Interests be sold at public auction (the "Auction") in the County of New York, State of New York, at 60 Centre St., by and under the direction of Carl Wisotsky, Esq. (the "Referee"), who is appointed referee for that purpose; that the Referee give public notice in the Wall Street Journal of the time and place of such sale in accordance with New York Real Property Actions and Proceedings Law ("RPAPL") § 231^{and} it is further: 212-685-7100

ORDERED, ~~ADJUDGED AND DECREED~~ that prior to the completion of the sale, the successful bidder or bidders at the Auction shall seek to obtain approval by written consent of the relevant regulatory authorities of the Government of the Commonwealth of The Bahamas, namely, the Central Bank of The Bahamas and the Bahamas Investments Board, respecting the transfer of the West End Entity Interests to the successful bidder or bidders (the "Approval") and shall submit the necessary documentation to the Bahamian Government seeking such Approval no later than ten (10) days following the Auction and provide a copy of the application for Approval to the Referee no later than fifteen (15) days following the Auction; and it is further;

ORDERED, ~~ADJUDGED AND DECREED~~ that the successful bidder or bidders at the Auction shall promptly deliver to the Referee evidence of such Approval upon obtaining such Approval and, upon receipt by the Referee of such evidence of Approval, the successful bidder or bidders shall be deemed the purchaser or purchasers and rightful owners of the West End Entity Interests and shall be registered and reflected as such in the organizational documents

of Ginn-LA West End Ltd., LLLP, and Ginn-West End GP, LLC, and that such organizational documents, together with the other books and records pertaining to such entities and their subsidiaries in the possession or control of the Defendants (other than Wilmington), shall be turned over to the purchaser or purchasers, and the Referee shall execute and deliver to the purchaser or purchasers a memorandum or bill of sale of the West End Entity Interests, and any such additional documents as may be necessary to perfect the transfer of the West End Entity Interests; and it is further;

ORDERED, ~~AS FOLLOWS~~ that if (i) the successful bidder or bidders fail to seek Approval no later than (10) days following the Auction; or (ii) Approval has not been obtained within ninety (90) days from the date of application for such Approval, the successful bidder or bidders shall be deemed rejected and a new auction shall be conducted as soon as practicable thereafter in accordance with the Auction procedures set forth in this Judgment, provided that the successful bidder or bidders may seek to obtain an extension of the ninety (90) day Approval period upon good cause shown and that such request shall be submitted to the Referee on or before the expiration of the ninety (90) day period for obtaining Approval; and it is further;

ORDERED, ~~AS FOLLOWS~~ that Plaintiff or any other parties to this Action may become the successful purchaser or purchasers of the West End Entity Interests; in case the Plaintiff or its designee shall become the successful purchaser or purchasers of the West End Entity Interests, it shall not be required to make any deposit; that the Referee on receiving the proceeds of the sale shall deposit the proceeds of sale in the Referee's own name as referee in this Action, and shall make the following payments and draw checks for that purpose, in the following order:

First: The statutory fees of the Referee for conducting the sale, not to exceed the amount permitted by applicable law.

Second: The expenses of the sale, including posting and advertising.

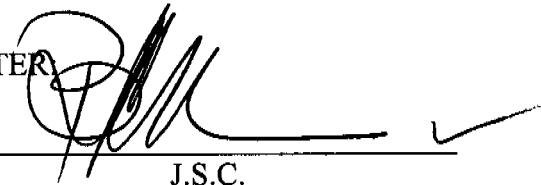
Third: The Referee shall pay to the Plaintiff the Aggregate Indebtedness of \$495,095,611⁷⁷ together with interest thereon at the applicable statutory post-judgment interest rate from the date of the entry of this judgment, or so much of the foregoing amounts as the proceeds of the West End Entity Interests will pay.

Fourth: That in case the Plaintiff be the purchaser of West End Entity Interests at the sale, the Referee shall not require the Plaintiff to pay in cash the entire amount bid at the sale, but shall only require payment to the Referee of the amounts specified above in the items marked "First" and "Second;" the balance of the amount bid, after deducting the amounts paid by the Plaintiff for the items above marked "First" and "Second," shall be allowed to the Plaintiff and applied by the Referee upon the amounts due to the Plaintiff as specified above in the item marked "Third;" if, after so applying the balance of the amount bid, there shall be a surplus over and above the amounts due to the Plaintiff as specified above in the item marked "Third," the Plaintiff shall pay to the Referee the amount of such surplus; that the Referee on receiving the several amounts from Plaintiff shall then deposit the balance.

The Referee shall deposit the surplus money, if any, with the New York County Commissioner of Finance within five (5) days after the surplus money is received and is ascertainable to the credit of this Action, to be withdrawn only on the written order of the Court, and the Referee shall make a report of such sale under oath showing the disposition of the proceeds of the sale, and file it with the Clerk of the County of New York with all convenient speed; it is further:

ORDERED, ADJUDGED AND DECREED (i) that if the proceeds of such sale are insufficient to pay the amount reported due the Plaintiff with interest and costs, Defendants waive any requirement under RPAPL § 1371, or other provision of law, that Plaintiff seek a deficiency judgment after the sale of the West End Entity Interests, and (ii) that any failure by Plaintiff to seek a deficiency judgment shall not constitute a waiver of any rights under the Credit Agreement (as defined in the Verified Complaint), including any rights Plaintiff may have to recover any portion of the Aggregate Indebtedness remaining unsatisfied after the sale of the West End Entity Interests and application of the proceeds thereof (with such deficiency rights not to exceed the scope set forth in the Stipulations of Foreclosure); it is further:


ORDERED ^{and} ADJUDGED ~~AND DECREED~~ that the Defendants in this Action, and all persons claiming under them, are forever barred and foreclosed of all right, claim, lien, title, interest, and equity of redemption in the West End Entity Interests.

ENTER 

J.S.C.
BARBARA R. KAPNICK

J.S.C. DO NOT POST

FILED
DEC 29 2009
COUNTY CLERKS OFFICE
NEW YORK


CLERK

Index No. 601622/2009

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

CREDIT SUISSE, CAYMAN ISLANDS BRANCH, as Administrative and
Collateral Agent,

Plaintiff,

-against-

GINN-WEST END GP, LLC; et al.,

Defendants.

[PROPOSED]
JUDGMENT OF FORECLOSURE AND SALE

SKADDEN, ARPS, SLATE, MEAGHER & FLOW LLP

ATTORNEYS FOR PLAINTIFF

FOUR TIMES SQUARE
BOROUGH OF MANHATTAN
CITY OF NEW YORK
NEW YORK 10038-6522
(212) 735-3000

NY'S SUPREME COURT
RECEIVED
SEP 8 2009
IAS MOTION
SUPPORT OFFICE

FILED
DEC 29 2009
11:00 AM
NY'S CO. CLERK OFFICE