

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

HERMAN TRUST,)	CASE NO. CI 13-
)	
Plaintiff,)	
)	
v.)	
)	
BRASHEAR 711 TRUST,)	
)	
Defendant.)	

COMPLAINT

Comes now the Plaintiff, the Herman Trust (hereinafter referred as "Herman Trust"), and for its cause of action against the Defendant, Brashear 711 Trust (hereinafter referred as "Brashear 711"), states and alleges as follows:

1. The Herman Trust was at all times pertinent hereto an irrevocable trust organized and existing under the laws of the state of Nebraska. Richard L. Herman is the current Trustee for the Herman Trust.

2. Upon information and belief, Brashear 711 is a nominee trust which was organized and existing under the laws of the state of Nebraska. Upon information and belief, Brashear 711 was created for the benefit of Kermit A. Brashear and Kathleen K. Brashear (hereinafter referred as the "Brashears"). Upon information and belief, Kermit A. Brashear is the current Trustee for Brashear 711.

3. On or about January 17, 2011, Brashear 711 executed and delivered to the Herman Trust a Promissory Note (hereinafter referred as the "Note") in the principal amount of Seven Hundred Sixty-Four Thousand and no/100 (\$764,000.00) with interest originally accruing thereon at the rate of 5.0% per annum from the date of the Note.

That attached hereto marked Exhibit "A" and incorporated herein by this reference is a copy of the Note.

4. Pursuant to its terms, the Note was to be repaid in equal monthly "interest only payments" which were to commence on or about February 17, 2011 and continue thereon until October 12, 2012, at which time the entire principal balance and all unpaid interest were immediately due and payable.

5. Pursuant to its terms, Brashear 711 had an additional thirty (30) days from October 12, 2012 to pay the Herman Trust the entire principal balance and all accrued interest.

6. Brashear 711 has defaulted under the terms and conditions of the Note as a result of its failure to make the payments which have accrued under the terms and conditions of the same.

7. The Note has matured and is currently due and owing. After applying any and all payments made by the Brashear Trust, there is currently due and owing the principal sum of \$764,000.00 and accrued interest in the amount of \$15,278.90 as of March 7, 2013. Interest will continue to accrue on the principal balance from and after March 7, 2013 at a rate of 5% per annum.

8. The Herman Trust has made demand on the Brashear 711 for payment of the sums due and owing on the Note and the same remains unpaid.

9. The Herman Trust is entitled to a judgment against the Brashear 711 in the principal amount of \$764,000.00, together with all accrued interest to the date of judgment and the costs of this action.

WHEREFORE, the Herman Trust prays this Court for a judgment against Brashear 711 in the principal sum of \$764,000.000 together with interest accruing thereon from and after October 12, 2012 at a rate of 5% per annum, together with the costs of this matter and such other and further relief as the Court deems just and proper.

HERMAN TRUST,
Plaintiff,

BY: 

James P. Waldron, #16073
Christopher J. Tjaden, #18413
Michael J. Whaley, #19390
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HERMAN TRUST

BRASHEAR 711 TRUST

PROMISSORY NOTE

\$764,000.00

January 17, 2011

WHEREAS, Herman Trust (Trust) is the holder of certain cash based investments that have not generated an above-market return; and

WHEREAS, the Trust desires to maximize the return which it obtains with its assets in order to better fulfill the objectives of the Trust; and

WHEREAS, Brashear 711 Trust (711) is a nominee trust for the benefit of Kermit A. Brashear (Kermit) and Kathleen K. Brashear and, as such, owns a commercial building located at 711 North 108th Court, Omaha, Nebraska 68154 (Building) which is currently occupied by Brashear LLP (Firm); and

WHEREAS, 711 is willing to borrow money from the Trust and use the Building as collateral for said loan.

NOW THEREFORE, FOR VALUE RECEIVED, the receipt of which is hereby acknowledged, 711 promises to pay to Trust, as set forth herein, the principal sum of Seven Hundred Sixty-Four Thousand Dollars and No Cents (\$764,000.00), together with interest at the rate of five percent (5.00%) per annum.

Payment of interest accrued shall be made monthly on each monthly anniversary hereof. The principal amount borrowed shall not be required to be repaid hereunder unless and until: (a) the Building is sold; (b) the death of Kermit; or (c) October 12, 2012, whichever shall be the first to occur (each shall be separately referred to as a "Repayment Event"). Upon the occurrence of a Repayment Event, 711 shall have thirty (30) days in which to effectuate repayment of the full principal amount then owing plus all interest accrued through the date of payment; provided, however, that Trust shall have no obligation to release its security interest in the Building until this instrument is paid in full.

711 shall be entitled to prepay this Note in whole or in part at any time without prepayment charge or penalty. Any partial prepayment shall be applied first to the principal amount outstanding and second against the interest outstanding.

00096743:1



A handwritten signature in black ink, appearing to be "Cab".

711 hereby waives presentment, demand for payment, notice of dishonor, notice of protest and all other notices or demands in connection with the delivery, acceptance, performance, default or endorsement of this Note.

The terms hereof shall be binding upon the successors, assigns, heirs and legal representatives of the undersigned, and shall inure to the benefit of the successors, assigns, beneficiaries and legal representatives of Trust.

711 shall be in default of this Note if it shall fail to make the monthly payment of interest hereunder and/or shall fail to repay this Note in full within thirty (30) days after the occurrence of a Repayment Event. The right of Trust to declare default hereunder is an ongoing right which should not be considered to be waived upon a failure to promptly exercise such right when available.

This Note is non-negotiable. The terms of this Note shall be governed by and construed and enforced in accordance with the laws of the State of Nebraska.

If any term or provision of this Note shall to any extent be held invalid or unenforceable, the remaining terms and provisions of this Note shall not be affected thereby, and each remaining term and provision of this Note shall be valid and enforced to the fullest extent permitted by law. No modification of any of the terms and conditions of this Note shall be effective unless contained in a writing signed by both parties.

Any notice to 711 or Trust provided for in this Note shall be given by mailing same by first-class United States Mail, postage prepaid, addressed to the last known address of the recipient, or at such other address as may have been designated by notice to the opposing party.

711 ACKNOWLEDGES RECEIPT OF A COMPLETE COPY OF THIS NOTE.

IN WITNESS WHEREOF, 711 has executed and delivered this Note effective as of the date first above written.

BRASHEAR 711 TRUST,

A handwritten signature in black ink, appearing to read "K. Brashear", is written over a horizontal line.

Kermit A. Brashear, Trustee