

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

F & M – ONE INC.,

Plaintiff,

vs.

420 CONDOMINIUM REGIME, a Condominium organized under the laws of the State of Nebraska; MABABIL, LLC, a Nebraska limited liability company; and

All persons having or claiming any interest in the following described real estate situated in Douglas County, Nebraska: East 7 ft of the west 20.8 ft of the north 16.5 ft of the ground level of the commercial unit (unit 13) and the east 5.90 ft of the west 13.8 ft of the north 7.8 ft of the ground level of said unit 13 (said measurements commencing at the northwest corner of lot 7 block 151), real names unknown,

Defendants.

CASE NO. CI 18 -

**COMPLAINT TO QUIET TITLE
(EQUITY)
AND REFORMATION OF
INSTRUMENT**

COMES NOW Plaintiff F & M – One, Inc. (hereinafter “Plaintiff”), and for its cause of action against the Defendants states as follows:

1. This Complaint concerns the following property, located in Omaha, Douglas County, Nebraska, legally described as:

East 7 ft of the west 20.8 ft of the north 16.5 ft of the ground level of the commercial unit (unit 13) and the east 5.90 ft of the west 13.8 ft of the north 7.8 ft of the ground level of said unit 13 (said measurements commencing at the northwest corner of lot 7 block 151)
(hereinafter “the “Subject Property”).

2. Plaintiff is a Minnesota corporation, lawfully doing business in the State of Nebraska, organized by Marsha B. Congdon for estate planning purposes.

3. Defendant 420 Condominium Regime, a condominium organized under the laws of the State of Nebraska, may claim an interest in the Subject Property by virtue of its management of the property set forth within its Declaration.

4. Defendant Mababil, LLC, is a Nebraska limited liability company that may claim an interest in the aforementioned property which is situated in Douglas County.

5. Plaintiff is the owner of a condominium unit located on the second floor of the 420 Condominium Regime, Unit 14, legally described in the Master Deed and Declaration Creating 420 Condominium Property Regime, recorded August 27, 1991 in Book 1905 at Page 639 and refiled August 16, 1996 in Book 1185 at Page 085 with the Register of Deeds of Douglas County, Nebraska.

6. The Condominium has access to and from the ground floor provided by a spiral staircase in the Subject Property, which is also utilized for storage. The Subject Property has been utilized as an accessory to the second floor for the past 40 years.

7. From approximately 1978 through 1995, the Condominium along with the Subject Property was operated as commercial space leased to the Howard Street Tavern, which utilized the Subject Property as an exit to and from the second floor to comply with fire codes.

8. In 1996, the owner of the 420 Condominium Regime converted the second floor space which the Howard Street Tavern operated into a residential condominium. The Condominium was sold together with the Subject Property to Gail F. Leonhardt and Bonnie M. Leonhardt pursuant to a Trustee's Deed dated June 19, 1998, filed June 25, 1998 with the Register of Deeds for Douglas County, Nebraska. The Grantees utilized the Condominium and Subject Property for storage and access to and from the ground floor level.

9. On or about January 6, 1999, an Amendment to the Master Deed of 420 Condominium Regime was executed to provide:

The Master Deed is amended to provide that the east 7 ft. of the west 20.8 ft. of the north 16.5 ft of the ground level of the commercial unit (unit 13) and the east 5.90 ft. of the west 13.8 ft. of the north 7.8 ft. of the ground level of said unit 13 (said measurements commencing at the northwest corner of lot 7 block 151) shall be added to unit 14, and removed from unit 13. The remainder of unit 13 shall henceforth be designated as unit 15. The enlarged unit 14 shall henceforth be designated as unit 16.

10. The description in the Amendment to the Master Deed was intended to be consistent with the use of the Subject Property with the Condominium beginning in 1978.

11. The Amendment to the Master Deed of the 420 Condominium Regime through inadvertence was not filed of record with the Register of Deeds.

12. A copy of the Amendment to the Master Deed of the 420 Condominium Regime is attached hereto as Exhibit "A" and incorporated herein by reference.

13. The Amendment to the Master Deed is valid and enforceable and effectively formally transferred ownership of the Subject Property from Unit 13 to Unit 14, the Condominium, consistent with its prior use beginning in 1978.

14. On or about May 28, 2002, Gail F. Leonhardt and Bonnie M. Leonhardt sold the Condominium and Subject Property to Jeffrey B. Davis and Sherry L. Davis pursuant to a Warranty Deed dated May 28, 2002, filed June 3, 2002 with the Register of Deeds for Douglas County, Nebraska, who took possession and use of the Condominium and Subject Property for storage and access to and from the ground level.

15. On or about August 28, 2008, Jeffrey B. Davis and Sherry L. Davis sold the Condominium and Subject Property to Marsha Brooks Congdon, Trustee of the Marsha Brooks Congdon Trust Agreement dated December 22, 1994 pursuant to a Warranty Deed dated August 28, 2008, filed September 10, 2008 with the Register of Deeds for Douglas County, Nebraska, who took possession and use of the Condominium and Subject Property for storage and access to and from the ground level.

16. On or about February 12, 2018, Marsha Brooks Congdon, Trustee of the Marsha Brooks Congdon Trust Agreement dated December 22, 1994 as Grantor and for estate planning purposes, conveyed unto F & M-One, Inc., a Minnesota corporation, the Condominium and Subject Property to pursuant to a Trustee's Warranty Deed dated February 12, 2018, filed February 20, 2018 with the Register of Deeds for Douglas County, Nebraska.

17. That Plaintiff believes there may be persons other than those names Defendants set forth herein who may claim an interest in the Subject Property, which claims do not appear of record; the Plaintiff, after diligent inquiry and reasonable search, has not been able to ascertain the names and whereabouts of such persons and therefore is designating such persons as "All persons having or claiming any interest in the following described real estate situated in Douglas County, Nebraska: East 7 ft of the west 20.8 ft of the north 16.5 ft of the ground level of the commercial unit (unit 13) and the east 5.90 ft of the west 13.8 ft of the north 7.8 ft of the ground level of said unit 13 (said measurements commencing at the northwest corner of lot 7 block 151), real names unknown."

18. Marsha B. Congdon is the occupant of the Condominium including the Subject Property and has occupied the Condominium continuously from August 28, 2008, to the present time.

19. Marsha B. Congdon and Plaintiff are in privity of possession of the Condominium and Subject Property.

20. Marsha B. Congdon has openly used the Subject Property for access to and from the ground level and storage since August 28, 2008.

21. No person or entity other than Marsha B. Congdon or guests of Marsha B. Congdon has used the Subject Property for any purpose since August 28, 2008.

22. Plaintiff believes there may be persons other than those named Defendants set forth herein who may claim an interest in the Subject Property, which claims do not appear of record; the Plaintiff, after diligent inquiry and reasonable search, has not been able to ascertain the names and whereabouts of such persons and therefore is designating such persons as "All persons having or claiming any interest in the following described real estate situated in Douglas County, Nebraska: East 7 ft of the west 20.8 ft of the north 16.5 ft of the ground level of the commercial unit (unit 13) and the east 5.90 ft of the west 13.8 ft of the north 7.8 ft of the ground level of said unit 13 (said measurements commencing at the northwest corner of lot 7 block 151), real names unknown."

23. None of said Defendants, nor any of them, have in fact, any right, title or interest in and to the Subject Property or any part thereof.

24. That by virtue of the facts set out above, there is cast a cloud upon the title of the Plaintiff in this real estate which prevents the quiet use and enjoyment of the premises, and which tends to impair and lessen the value of the same, and will, unless Plaintiff's title as against them is quieted and established, cause Plaintiff irreparable injury and that Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff F & M – One, Inc., prays that Plaintiff's title and estate in and to the Subject Property as described in the caption and in Paragraphs 1 and 9 hereof, be established in Plaintiff against the adverse claims of the Defendants, and that each and all of them, and all persons claiming by, through or under them, or any of them, be forever barred and estopped from having or claiming to have any right, title or interest in and to said real estate adverse to the Plaintiff, and that this Plaintiff be decreed to be the absolute owner in fee simple of the above described real estate and be entitled to the quiet and peaceful possession thereof,

and that said title be forever quieted in said Plaintiff as against all claims of the Defendants, and each and all of them, and for such other and further relief as the Court may deem equitable in the premises.

DATED this 19th day of December, 2018.

F & M – ONE INC, Plaintiff,

By:
For:



LOCHER PAVELKA DOSTAL
BRADDY & HAMMES, L.L.C.
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Omaha, Nebraska 68102
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Kevin J. Dostal, #17674
Amy M. Locher, #24786

AMENDMENT TO THE MASTER DEED
OF THE
420 CONDOMINIUM REGIME

The Master Deed is amended to provide that the east 7 ft. of the west 20.8 ft. of the north 16.5 ft. of the ground level of the commercial unit (unit 13) and the east 5.90 ft. of the west 13.8 ft. of the north 7.8 ft. of the ground level of said unit 13 (said measurements commencing at the northwest corner of lot 7 block 151) shall be added to unit 14, and removed from unit 13. The remainder of unit 13 shall henceforth be designated as unit 15. The enlarged unit 14 shall henceforth be designated as unit 16. Said unit 16 shall have an area of 2806 sq. ft. The percentage of the regime allocated to unit 16 shall be 6.53. The percentage of the regime allocated to unit 15 shall be 25.97. The percentage of limited common elements allocated to unit 16 shall be 9.19.

DATED this 6th day of January, 1999.


Mark Mercer, President

ATTEST:


Martin Desilets, Secretary

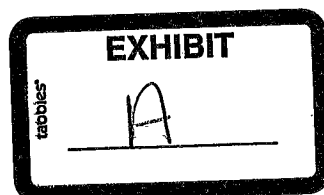
STATE OF NEBRASKA)
) ss
COUNTY OF DOUGLAS)

(On this 6th day of January, 1999, before me, the undersigned a Notary Public, duly commissioned and qualified for in said County and State, personally appeared Martin Desilets / Mark Mercer, to me known to be the identical person or persons whose name is or names are affixed to the foregoing instrument and acknowledged the execution thereof to be his, her or their voluntary act and deed

WITNESS my hand and notarial seal this 6th day of January, 1999




Notary Public



IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

F & M – ONE INC.,

Plaintiff,

vs.

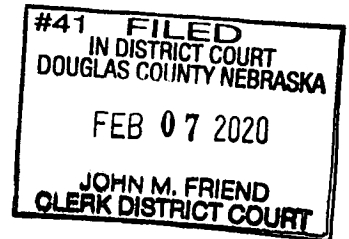
420 CONDOMINIUM REGIME, a Condominium organized under the laws of the State of Nebraska; MABABIL, LLC, a Nebraska limited liability company; and

All persons having or claiming any interest in the following described real estate situated in Douglas County, Nebraska: East 7 ft of the west 20.8 ft of the north 16.5 ft of the ground level of the commercial unit (unit 13) and the east 5.90 ft of the west 13.8 ft of the north 7.8 ft of the ground level of said unit 13 (said measurements commencing at the northwest corner of lot 7 block 151), real names unknown,

Defendants.

CASE NO. CI 18 - 10662

**MOTION FOR DEFAULT
JUDGMENT**



COMES NOW Plaintiff F & M – ONE INC. (hereinafter “Plaintiff”), and moves the Court for an entry of default judgment against the Defendants described as: “All persons having or claiming any interest in the following described real estate situated in Douglas County, Nebraska: East 7 ft of the west 20.8 ft of the north 16.5 ft of the ground level of the commercial unit (unit 13) and the east 5.90 ft of the west 13.8 ft of the north 7.8 ft of the ground level of said unit 13 (said measurements commencing at the northwest corner of lot 7 block 151), real names unknown,” and in support of said Motion shows the Court as follows:

1. That all persons having or claiming any interest in the following described real estate situated in Douglas County, Nebraska: East 7 ft of the west 20.8 ft of the north 16.5 ft of the ground level of the commercial unit (unit 13) and the east 5.90 ft of the west 13.8 ft of the north 7.8 ft of the ground level of said unit 13 (said measurements commencing at the northwest corner of lot 7 block 151), real names unknown, were served with Notice of Suit by Publication in *The Daily Record* on May 23, 2019; May 30, 2019; and June 6, 2019; but that said Defendants have failed to file an Answer or other responsive pleading and are therefore in default.

2. That the allegations contained in Plaintiff’s Complaint are true.



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3. That Defendants are not members of the military service of the United States or its allies.

4. That Defendants are not infants, infirm, or incompetent persons.

WHEREFORE, Plaintiff F & M – ONE INC., moves the Court for a judgment by default against all persons having or claiming any interest in the following described real estate situated in Douglas County, Nebraska: East 7 ft of the west 20.8 ft of the north 16.5 ft of the ground level of the commercial unit (unit 13) and the east 5.90 ft of the west 13.8 ft of the north 7.8 ft of the ground level of said unit 13 (said measurements commencing at the northwest corner of lot 7 block 151), real names unknown, prays that Plaintiff's title and estate in and to the real property described in the caption and in Paragraphs 1 and 9 of the Complaint to Quiet Title, be established in Plaintiff against the adverse claims of the Defendants herein, and that each and all of them, and all persons claiming by, through or under them, or any of them, be forever barred and estopped from having or claiming to have any right, title or interest in and to said real estate adverse to the Plaintiff, and that this Plaintiff be decreed to be the absolute owner in fee simple of the above described real estate and be entitled to the quiet and peaceful possession thereof, and that said title be forever quieted in said Plaintiff as against all claims of the Defendants, and each and all of them, and for such other and further relief as the Court may deem equitable in the premises; that Plaintiff recover its costs herein expended and that Plaintiff have such other and further relief as the Court may deem just and equitable on the premises.

DATED this 7th day of February, 2020.

F & M – ONE INC. Plaintiff,

By: 

For: _____

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