

IN THE CIRCUIT COURT OF GARLAND COUNTY, ARKANSAS

FILED

AUTO PARTS AND BEARINGS, INC.

2011 MAY 2 PM 4 07

V.

CASE NO. CV 2011-444

PLAINTIFF
COURT CLERK

BY [Signature]

DEFENDANTS

620 OUACHITA LLC; TRAVIS
MORRISSEY; Q. BYRUM HURST JR.; and
HOT SPRINGS BANK AND TRUST

COMPLAINT FOR FORCLOSURE AND APPOINTMENT OF RECEIVER

COMES NOW the Plaintiff, Auto Parts and Bearings, Inc., by and through its attorney, Tom Smitherman, and for its Complaint against the Defendants, 620 Ouachita LLC., Travis Morrissey as managing partner; Travis Morrissey, individually; Q. Byrum Hurst, Jr., individually; and Hot Springs Bank and Trust, states and alleges:

1. Plaintiff, Auto Parts and Bearings, Inc., is an Arkansas corporation, in good standing, doing business in Garland County, Arkansas.
2. Defendant, 620 Ouachita LLC., was an Arkansas limited liability company, doing business in Garland County, Arkansas, however its charter has been revoked by the Secretary of State.
3. Defendant, Travis Morrissey, is a resident of Garland County, Arkansas.
4. Defendant, Q. Byrum Hurst, Jr., is a resident of Garland County, Arkansas.
5. Defendant, Hot Springs Bank and Trust, is a bank authorized to conduct business in the State of Arkansas, and does conduct business in Garland County, Arkansas.

6. The real property that is the subject of this cause of action is titled in the name of 620 Ouachita LLC., and is located in Garland County, Arkansas.

7. This Court has jurisdiction over the subject matter of this cause; the parties herein, and venue is proper before this Court.

8. On December 28, 2007, Defendants, 620 Ouachita LLC, by Travis Morrissey, managing partner; and as personal guarantors: Travis Morrissey, individually, and Q. Byrum Hurst, Jr., individually, executed a promissory note in favor of the Plaintiff, in the principal sum of \$234,000.00. On January 28, 2011, the note was extended for a term of 36 months. A copy of said note is attached hereto as Exhibit 1 and incorporated herein.

9. The aforesaid promissory note is secured by a Real Estate Mortgage that was executed by 620 Ouachita LLC. on December 28, 2007. A true copy of the mortgage is attached hereto as Exhibit 2, and incorporated herein. The mortgage transferred to the Plaintiff a mortgage interest in the following described Garland County, Arkansas, real property:

All of Lot 3 and a part of Lot 4, Block 92, Hot Springs Reservation, Garland County, Arkansas, more particularly described as follows: Beginning at the common corner of Lots 2 and 3 of said Block 92, said point being on the Northwesterly right of way of Ouachita Avenue; thence South 42 degrees 53 minutes 26 seconds West along said Ouachita Avenue for a distance of 112.01 feet to a point which is 6 feet Southwesterly from the common corner of Lots 3 and 4; thence leaving Ouachita Avenue, North 44 degrees 56 minutes 18 seconds West 232.82 feet to a found monument which is 3.5 feet Southwesterly from the common corner of Lots 3, 4, 15, and 16 of said Block 92; thence North 45 degrees 34 minutes 31 seconds East along the Northerly line of said Lots 4 and 3 for a distance of 107.29 feet to a found monument at the Northeast corner of said Lot 3; thence South 46 degrees 06 minutes 28 seconds East

along the Northeasterly line of said Lot 3 for a distance of 227.66 feet to the Point of beginning.

TOGETHER WITH a 10 foot maintenance and utility easement, being the West 10 feet of Lot 2, extending from the Northwesterly right of way of Ouachita Avenue along the Northeasterly line of Lot 3 for a distance of 84 feet to the end of said easement.

(According to survey by John M Thornton, PS#864, dated 3-20-07)

10. Plaintiff's mortgage was filed for record on January 3, 2008, in the Deed and Mortgage Records of Garland County, Arkansas, at Book 2916 Page 0879.

11. Under the provisions of the said mortgage, Defendant, Grantor, 620 Ouachita, LLC is to pay all taxes of what ever nature, as well as assessments for improvements, when due. Grantor has failed to comply with this provision of the Mortgage in that it failed to pay the real estate taxes for the years 2008 and 2009 when due causing the Plaintiff to pay said taxes on April 22, 2011, in the total sum of \$5813.01 including penalties, costs and interest. A copy of the receipt for payment of said taxes is attached hereto as Exhibit 3 and incorporated herein.

12. The mortgage further provides that 620 Ouachita LLC will be in default if, among other things, it fails to perform the agreements contained within said mortgage, giving Plaintiff the right to declare the entire debt due and payable. In addition, the mortgage provides for the payment to the Plaintiff by the Defendants of all expenses incurred by the Plaintiff in enforcing Plaintiff's rights under the mortgage.

13. 620 Ouachita LLC is in default under the terms of the mortgage.

14. Plaintiff has exercised its right to accelerate the indebtedness represented by the mortgage and promissory note.

15. As of April 28, 2011, the balance due and owing to the Plaintiff under the

loan documents was \$212,902.24, representing \$211,840.98 in unpaid principal and \$1,061.26 in accrued and unpaid interest. Interest continues to accrue at the per diem rate of \$34.82 for April 29, 2011, and each day thereafter until the debt is paid in full.

16. Defendant, Hot Springs Bank and Trust Company, may claim a mortgage interest in the hereinabove described real property by virtue of a mortgage executed by 620 Ouachita LLC in its favor, and recorded on March 14, 2008, in Book 2938 at Page 0304 in the deed and mortgage records of Garland County, Arkansas.

17. Any mortgage interest claimed by Defendant, Hot Springs Bank and Trust Company, in the hereinabove described real property is junior and inferior to that of the Plaintiff's interest therein.

18. The real estate that is the subject of this action is commercial rental property. Under the terms of the mortgage, in the event of default or failure by the Grantor to perform the agreements therein, the Plaintiff is entitled to collect rents and profits and apply same on unpaid indebtedness.

19. Plaintiff is entitled to immediate appointment of a receiver to gather/collect the rental income from the subject real estate, as well as to protect and preserve the real estate from loss or destruction.

WHEREFORE, Plaintiff, Auto Parts and Bearings, Inc., prays as follows:

- (a) For a finding by this Court that Auto Parts and Bearings, Inc.'s interest in and to the above described real property is prior and paramount to any interest which any of the defendants may claim in and to the same;
- (b) For decrees of foreclosure of defendants' interests in the real property described herein;

(c) For joint and several judgments against 620 Ouachita LLC, Travis Morrissey, Q. Byrum Hurst, Jr., and the real property described herein in the amount of \$212,902.24 owed by these defendants pursuant of the mortgage and note as of April 28, 2011, representing unpaid principal of \$211,840.98, plus accrued and unpaid interest of \$1,061.26. Interest at the per diem rate of \$34.82 for April 29, 2011, and thereafter until judgment; for the sum of \$5813.01 for real estate taxes, interest and penalty paid by the Plaintiff; plus reasonable attorney's fees and all collection costs incurred by the Plaintiff, all as provided in the mortgage and note, and post judgment interest at the highest rate allowed by law until judgment is paid in full;

(d) If judgment is not paid within ten (10) days after entry, for a Decree of Foreclosure and for the appointment of a Commissioner in Garland County for the purpose of conducting a judicial sale of the real property collateral described above with the proceeds applied as follows: first, to the cost of sale including reasonable Attorney's fees and costs, then to the portion of Defendants' obligations to Auto Parts and Bearings, Inc. that constitutes interest accrued but unpaid, then to the remainder of Defendants' obligations to Auto Parts and Bearings, Inc., including reimbursement for taxes paid, then to the holders of any liens or security interest on the real property that are junior to the liens and security interests of Auto Parts and Bearings, Inc. in the real property, and the balance, if any, to be paid to 620 Ouachita LLC, or whosoever else may be lawfully entitled to receive the same or in such manner as the Court may direct;

(e) For entitlement to enforce performance by any purchaser(s) at a judicial sale, or, without waiving damages, to take the second highest bid (and so on until the property

is sold to a bidder), or if no second highest bid exists, to reschedule another sale without further Order of the Court;

(f) For immediate appointment of a receiver to gather/collect the rental income from the real property, as well as to protect and preserve the real property collateral from loss or destruction;

(g) For retention of jurisdiction for the Court to enter Writs of Assistance if necessary; and

(h) For all other proper relief to which Plaintiff is entitled.

Auto Parts and Bearings, Inc.

By Tom Smitherman
Tom Smitherman, its attorney (73177)
Post Office Box 6412
Hot Springs, Arkansas 71902
501.627.6149

TSM
qbt

** TRAVIS MORRISSEY, AS MEMBER AND INDIVIDUALLY,
AND Q. BYRUM HURST, JR., AS MEMBER AND INDIVIDUALLY

PROMISSORY NOTE

\$234,000.00

Hot Springs, Arkansas

Date: December 28, 2007

For value received, 620 OUACHITA, LLC, ^{**}promises to pay to the order of AUTO PARTS AND BEARINGS, INC., the sum of TWO HUNDRED THIRTY-FOUR THOUSAND AND NO/100 DOLLARS (\$234,000.00) at Hot Springs, Arkansas, or any other place set by the Payee herein, in monthly installments as follows, to-wit: \$1676.45 on or before the 28th day of January, 2008, after date, and a like sum on the same day of 34 successive months thereafter, with full amount of principal indebtedness due and payable 36 months from the date hereof, together with interest from date until maturity at the rate of six percent (6%) per annum, payable upon the full amount of unpaid principal at each installment period, and is to be included in said installment payment, both principal and interest bearing interest at the rate of 6% per annum from maturity until paid.

If default should be made in the payment of any one installment (by 30 days) of either principal or interest when due, it shall cause the whole of the remaining unpaid indebtedness, both principal and interest, to become immediately due and payable at the option of the owner or holder of this note. The makers, endorsers, sureties, and guarantors of this note hereby severally waive presentment for payment, protest, notice of protest, notice of nonpayment, diligence in enforcement of payment thereof, and consent to any and all renewals or extensions of the time of payment and partial payment before, at, or after maturity. In the event of default, the makers, sureties, endorsers and guarantors agree to pay a reasonable attorney fee.

This note being mentioned in a Mortgage of even date herewith from 620 OUACHITA, LLC, to AUTO PARTS AND BEARINGS, INC. and is secured by a lien for \$234,000.00 on the following described property located in the State of Arkansas, County of Garland, to-wit:

EXHIBIT 1


TSM

EUDOX PATTERSON
ATTORNEY AT LAW
225 WOODBINE
HOT SPRINGS, ARKANSAS 71901
(501)321-1136 FAX (501) 331-1137

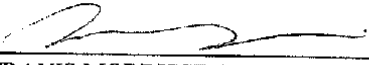
All of Lot 3 and a part of Lot 4, Block 92, Hot Springs Reservation, Garland County, Arkansas, more particularly described as follows: Beginning at the common corner of Lots 2 and 3 of said Block 92, said point being on the Northwesterly right-of-way of Ouachita Avenue; thence South 42°53'26" West along said Ouachita Avenue for a distance of 112.01 feet to a point which is 6 feet Southwesterly from the common corner of Lots 3 and 4; thence leaving Ouachita Avenue, North 44°56'18" West 232.82 feet to a found monument which is 3.5 feet Southwesterly from the common corner of Lots 3, 4, 15 and 16 of said Block 92; thence North 45°34'31" East along the Northerly line of said Lots 4 and 3 for a distance of 107.29 feet to a found monument at the Northeast corner of said Lot 3; thence South 46°06'28" East along the Northeasterly line of said Lot 3 for a distance of 227.66 feet to the Point of beginning.

TOGETHER WITH a 10 foot maintenance and utility easement, being the West 10 feet of Lot 2, extending from the Northwesterly right-of-way of Ouachita Avenue along the Northeasterly line of Lot 3 for a distance of 84 feet to the end of said easement.


(According to survey by John M. Thornton, PS #864, dated March 20, 2007.)

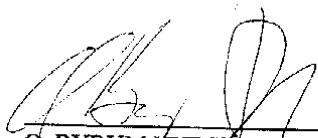
The maker of this note reserves the right to make additional payments or payment in full at any time before maturity and thereby abating the interest on the amount or amounts prepaid.

620 OUACHITA, LLC

BY: 
TRAVIS MORRISSEY, Managing Member

PERSONAL GUARANTORS:


TRAVIS MORRISSEY, Individually


Q. BYRUM HURST, JR., Individually

20-7
07471

0711082

Hot Springs Title Company
534 Ouachita Suite 3
Hot Springs, AR 71901

When recorded mail to:
Auto Parts & Bearings, Inc.
Glenn Smitherman
100 Saxony
Hot Springs, AR 71901

JAN 03 2008

9:03 AM
Michelle [Signature]

MORTGAGE BOOK 2916 PAGE 0879

KNOW ALL PERSONS BY THESE PRESENTS:

THAT 620 OUACHITA, LLC, an Arkansas Limited Liability Company, by its Managing Member, TRAVIS MORRISSEY, Grantor, for and in consideration of the sum of One Dollar (\$1.00) to Grantor in hand paid, the receipt of which is hereby acknowledged, and in consideration of the premises hereinafter set forth, do hereby grant, bargain, sell and convey unto AUTO PARTS AND BEARINGS, INC., a Corporation, Grantee, and unto Grantee's successors and assigns, the following lands situated in Garland County, Arkansas, to-wit:

All of Lot 3 and a part of Lot 4, Block 92, Hot Springs Reservation, Garland County, Arkansas, more particularly described as follows: Beginning at the common corner of Lots 2 and 3 of said Block 92, said point being on the Northwesterly right-of-way of Ouachita Avenue; thence South 42°53'26" West along said Ouachita Avenue for a distance of 112.01 feet to a point which is 6 feet Southwesterly from the common corner of Lots 3 and 4; thence leaving Ouachita Avenue, North 44°56'18" West 232.82 feet to a found monument which is 3.5 feet Southwesterly from the common corner of Lots 3, 4, 15 and 16 of said Block 92; thence North 45°34'31" East along the Northerly line of said Lots 4 and 3 for a distance of 107.29 feet to a found monument at the Northeast corner of said Lot 3; thence South 46°06'28" East along the Northeasterly line of said Lot 3 for a distance of 227.66 feet to the Point of beginning.

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(According to survey by John M. Thornton, PS #864, dated March 20, 2007.)

JMA TJM
EXHIBIT 2

EUDOX PATTERSON
ATTORNEY AT LAW
225 WOODBINE
HOT SPRINGS, ARKANSAS 71901
(501)321-1136 FAX (501) 311-1137

TO HAVE AND TO HOLD the same unto the said Grantee, and unto Grantee's successors and assigns forever, with all appurtenances thereunto belonging, and all rents, income, and profits therefrom after any default herein.


Grantor hereby covenants with said Grantee, Grantee's successors and assigns, that said lands are free and clear of all encumbrances and liens, and will forever warrant and defend the title to said property against all lawful claims.

The sale is on the condition that whereas Grantor is justly indebted unto said Grantee in the sum of TWO HUNDRED THIRTY-FOUR THOUSAND AND NO/100 DOLLARS (\$234,000.00), evidenced by one promissory note in the sum of \$234,000.00 of even date herewith bearing interest from date until due at the rate of SIX (6%) percent per annum and thereafter until paid at the rate of 6% per annum, payable in accordance with the terms and tenor of said note which are incorporated herein by reference.

The Grantor will neither sell, convey, bargain or grant the aforesaid property or any interest therein without the prior written consent of the Grantee, the aforesaid lien being non-assumable.


This mortgage shall also be security for any other indebtedness of whatsoever kind that the Grantee or the holders or owners of this mortgage may hold against Grantor by reason of future advances made hereunder, by purchase or otherwise, to the time of the satisfaction of this mortgage.

In the event of default of payment of any part of said sum, with interest, or upon failure of Grantor to perform the agreements contained herein, the Grantee, Grantee's successors and assigns, shall have the right to declare the entire debt to be due and payable; notice to Grantor is waived, and said option may be exercised at any time after default.

 TSM

Grantor hereby covenants that it will keep all improvements insured against fire in the amount of \$234,000.00, with all other full coverage insurance, loss payable clause to holder and owner of this mortgage; that said improvements will be kept in a good state of repair, and waste will neither be permitted nor committed; that all taxes of whatever nature, as well as assessments for improvements will be paid when due, and if not paid Grantee may pay same and shall have a prior lien upon said property for repayment, with interest at the rate of 10% per annum.

THEREFORE, if Grantor shall pay all indebtedness secured thereby, with interest at the times and in the manner aforesaid, and perform the agreements herein contained, then this conveyance shall be void. In case of non-payment or failure to perform the agreements herein contained, the said Grantee, Grantee's successors and assigns, shall have the right and power to take possession of the property herein conveyed and expel any occupant therefrom without process of law; to collect rents and profits and apply same on unpaid indebtedness; and with or without possession to foreclose the Grantor's equity of redemption in the manner authorized and/or required by the laws of the State of Arkansas, and resulting in a public sale at the Courthouse of Garland County, Arkansas, at which sale, any of the parties hereof, their heirs and assigns, may bid and purchase as any third party might do; and Grantor hereby authorizes the said Court's Commissioner to convey said property to anyone purchasing at said sale, and to convey an absolute title thereto, and the recitals of such conveyance shall be taken as prima facie true. The proceeds of said sale shall be applied, first, to the payment of all costs and expenses attending said sale; second to the payment of all indebtedness secured hereby, with interest; and the remainder, if any, shall be paid to said Grantor. Grantor hereby waives any and all rights of appraisal, sale, redemption and homestead under the laws of the State of Arkansas, especially under the Act approved May 8, 1899, and Acts amendatory thereof.

 TJM

IN TESTIMONY WHEREOF, the name of the Grantor is hereunto affixed by its Managing

Member, this 28th day of December, 2007.

620 OUACHITA, LLC

BY: [Signature]
TRAVIS MORRISSEY, Managing Member

STATE OF ARKANSAS
COUNTY OF GARLAND

ACKNOWLEDGMENT

On this day personally appeared before the undersigned, a Notary Public, within and for the County and State aforesaid, duly qualified, commissioned and acting, TRAVIS MORRISSEY, to me well known, who stated that he as the Grantor in the foregoing mortgage and stated that was the Managing Member of 620 OUACHITA, LLC, and was duly authorized in that capacity to execute the foregoing and further stated that he had executed the same for the consideration and purposes therein mentioned and set forth.

WITNESS my hand and official seal on this 28th day of December, 2007.

[Signature]
NOTARY PUBLIC

My Commission Expires:

5-12-2016



filed Recorder of Deeds
Garland County Arkansas
this 28th day of December 2007
at Garland, Arkansas
Leslie Allen Warren
Notary Public
My Commission Expires May 12, 2016
Garland County

[Signature]



Garland County
Rebecca Dodd-Talbert
Tax Collector

Telephone: (501) 622-3710
Fax: (501) 622-3717

200 Woodbine Room 108
Hot Springs, AR 71901

REAL ESTATE PROPERTY TAXES

PARCEL NUMBER: R54855
PAID BY: AUTO PARTS & BEARINGS INC

PRINT DATE: 04/22/2011

PO BOX 1059
HOT SPRINGS NATIONAL PARK AR 71902

PROPERTY ADDRESS: 618 OUACHITA

620 OUACHITA LLC
528 OUACHITA AVE
HOT SPRINGS, AR 71901

RECEIPT # WLJ.11004664
PAYMENT RECEIVED - 04/22/2011

\$5,813.01

PAYMENT SUMMARY

BILL NUMBER: 89866*08 TAXABLE VALUE: 38,779
2008 GENERAL TAXES \$1,601.57
2008 PENALTIES & COSTS \$165.65
2008 INTEREST \$244.72

2008 TOTAL (PAID IN FULL) \$2,011.94

BILL NUMBER: 89621*09 TAXABLE VALUE: 79,850
2009 GENERAL TAXES \$3,297.82
2009 PENALTIES & COSTS \$329.78
2009 INTEREST \$173.47

2009 TOTAL (PAID IN FULL) \$3,801.07

TOTAL AMOUNT PAID

\$5,813.01

2010 BALANCE DUE \$3,297.82

REMAINING DUE ON ACCOUNT: \$3,297.82

EXHIBIT 3