

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
Docket No. RE-2009-63

BANGOR SAVINGS BANK,)
)
Plaintiff)
)
vs.)
)
JAMES E. PROVOST,)
ROSE L. PROVOST, and)
FINANCE AUTHORITY OF MAINE,)
and PETER C. FESSENDEN,)
as Bankruptcy Trustee,)
)
Defendants)

**** **DISCLAIMER** ****

Bangor Savings Bank and Keenan Auction Company have provided the information contained in this bid package to persons interested in bidding for the property described herein. Each believes the information contained herein to be accurate and complete. **However, neither Bangor Savings Bank nor Keenan Auction Company, nor their respective agents, employees or attorneys, make any warranties of any kind as to the accuracy or completeness of the information contained herein.** Prospective bidders are urged to make such an independent investigation as to each of those matters to which an ordinary and prudent buyer would inquire.

For further information regarding the sale please contact Keenan Auction Company:

Keenan Auction Company ■ One Runway Road, South Portland, ME
04106 ■ 207-885-5100 ■ www.keenanauction.com ■ Auctioneer

Michael S. Haenn, Esq. ■ 88 Hammond Street, Bangor, ME 04401
■ 207-990-4905 ■ www.haennlaw.com ■
Attorney for Bangor Savings Bank

TERMS AND CONDITIONS OF PUBLIC SALE

Bangor Savings Bank v. James E. Provost et al.

14 Main Street
Albion, Maine

The following are the terms of the public sale of the real and personal property situated generally at 14 Main Street in Albion, Maine. The real property is described in the mortgage deed of James E. Provost to Bangor Savings Bank ("BSB") dated June 17, 2004 and recorded in the Kennebec Registry of Deeds in Vol. 8034, Page 94 ("the Realty"). The personal property, which will be sold with the Realty and as a sale in the entirety, consists generally of all furniture, fixtures, machinery and equipment located on or within the Realty and as may be owned by James E. Provost and subject to the security interest of BSB ("the Personalty"). The mortgage interest being foreclosed is also described in more detail in the Order and Judgment of Foreclosure dated January 13, 2010 and entered by the Superior Court for Kennebec County in the action docketed as *Bangor Savings Bank v. James E. Provost et al.*, Docket No. RE-2009-63.

Date/Place of Sale - March 9, 2010 commencing at 3:00 p.m. at 14 Main Street in Albion, Maine.

Nature of Sale - The public sale of the Realty is pursuant to 14 M.R.S.A. § 6321 et seq. and the judgment of foreclosure. The public sale of the Personalty is pursuant to 11 M.R.S.A. § 9-1610 and a security agreement executed by James E. Provost.

Terms of Sale - The terms of the sale of the Realty and the Personalty include the following:

(A) All of those terms set forth in the Notice of Public Sale published in the *Central Maine Morning Sentinel* on February 7, 14, and 21, 2010, including but not limited to the following: (i) a deposit to bid of \$5,000.00 in certified funds, payable to Keenan Auction Company, to be increased to ten percent of the bid amount within five calendar days of the public sale; and (ii) the balance of the purchase price is due and payable within 45 days of the public sale. All deposits from the highest bidder are non-refundable.

(B) BSB makes no warranties of any kind whatsoever regarding its title to the Realty or the Personalty; or the physical condition, location or value of the Realty or the Personalty; or compliance with any applicable federal, state or local law, ordinance and regulation, including zoning or land use ordinances. All of the Personalty is also and specifically sold without any express or implied warranties of title, merchantability, fitness for a particular purpose, or otherwise. Bidders must satisfy themselves as to the legal character of

specific property as real or personal in nature, and in all events and aspects bidders must also satisfy themselves as to each of those matters to which an ordinary and prudent buyer would inquire.

(C) The Realty and the Personalty are sold subject to all outstanding tax liens and municipal encumbrances, whether or not of record in the Kennebec Registry of Deeds or the Maine Secretary of State, as well as all real estate transfer taxes and sales taxes. Unless otherwise agreed as between the parties in writing and prior to closing as an alternative means of establishing the value of the Personalty for sales tax purposes, the auctioneer will collect at closing from the buyer sales taxes assessed by the State of Maine on the transfer of the Personalty and calculated based upon the ratio of the last assessed value of the Personalty and the Realty and as determined by the Albion tax assessor.

(D) A record of bidding will be maintained by BSB for its own use. All persons present at the public sale and wishing to submit a bid must register with the auctioneer and submit the requisite deposit in cash or certified funds prior to the commencement of bidding. In the event that there is a failure to close the sale with any person who executes a Purchase and Sale Agreement, BSB reserves the right to either hold a new sale or to contact the next highest bidder and allow that party to purchase the forfeited property for the next highest bid as the assignee of the highest bidder. BSB disclaims any responsibility for providing notice of any kind to any person subsequent to the public sale.

(E) BSB reserves the right to refuse or accept any irregular bid; to hold periodic recesses in the sale process; to continue the sale from time to time; and to amend the terms of sale as it deems in the best interests of BSB.

(F) The transfer of the Realty and the Personalty by BSB will be by release deed and release bill of sale in substantially the same form as those instruments attached to the Purchase and Sale Agreement and included in the bid package provided by the auctioneer to registered bidders.

Purchase and Sale Agreement - the highest bidder for the Realty and Personalty will be required to execute a Purchase and Sale Agreement with BSB, and which must be executed immediately after the close of bidding.

ADDITIONAL TERMS AND CONDITIONS MAY BE ANNOUNCED BY THE AUCTIONEER ON THE DATE OF THE PUBLIC SALE AND ARE INCORPORATED HEREIN BY REFERENCE.

Dated: March 9, 2010

Keenan Auction Company ■ One Runway Road, South Portland, ME
04106 ■ 207-885-5100 ■ www.keenanauction.com ■ Auctioneer

Michael S. Haenn, Esq. ■ 88 Hammond Street, Bangor, ME 04401 ■
207-990-4905 ■ www.haennlaw.com ■ Attorney for
Bangor Savings Bank

PURCHASE AND SALE AGREEMENT

AGREEMENT made as of this 9th day of March, 2010 by and between the following parties:

Seller: **Bangor Savings Bank**, a Maine corporation with a place of business in Bangor, Maine ("Seller"); and

Buyer: _____

_____ ("Buyer").

1. **Purchase and Sale; Property.** Seller hereby agrees to sell, and Buyer hereby agrees to buy, (a) a certain lot or parcel of land with any buildings thereon situated generally at 14 Main Street in Albion, Maine, and more particularly described in the mortgage deed of James E. Provost dated June 17, 2004 and recorded in the Kennebec Registry of Deeds in Vol. 8034, Page 94 ("the Realty"), and (b) all furniture, fixtures, machinery and equipment located on or within the said real estate and as may be owned by James E. Provost and subject to a security interest of Seller ("the Personalty").

2. **Basic Terms of Transfer.** Seller hereby agrees to transfer, and Buyer agrees to purchase, the Realty and the Personalty (collectively "the Property") on or before April 23, 2010 ("the Closing Deadline"). Seller will convey its interest in the Property subject to the following conditions and restrictions:

(a) conveyance of the Property at closing (on or before the Closing Deadline) will be by release deed and release bill of sale from Seller to Buyer in substantially the same form as those annexed hereto. Unless otherwise indicated below, and if more than one Buyer executes this Agreement, the deed and bill of sale from Seller to Buyer will be instruments of conveyance to Buyer as tenants in common.

Buyer's affirmative election as to the form of the instruments of conveyance from Seller:

- joint tenancy
- tenancy in common

(b) the closing will take place at the Law Office of Michael S. Haenn, 88 Hammond Street, Bangor, Maine, or at such other place as may be agreed between the parties.

(c) Seller makes no representations of any kind or nature as to the physical condition or title to either the Realty or the Personalty; or the physical condition, location or value of

either the Realty or the Personalty; or compliance with any applicable federal, state or local law, ordinance and regulation, including zoning or land use ordinances. All of the Personalty is also and specifically sold without any express or implied warranties of title, merchantability, fitness for a particular purpose, or otherwise, and is sold on an "AS IS, WHERE IS" basis.

(d) conveyance at closing will be subject to all outstanding municipal tax liens or other municipal or quasi-municipal encumbrances or assessments, whether or not of record in the Kennebec Registry of Deeds or the Maine Secretary of State on the date of closing, and further subject to all transfer taxes and sales taxes assessed by the State of Maine, all of which are entirely the responsibility of Buyer. Unless otherwise agreed as between the parties in writing and prior to closing as an alternative means of establishing such value for sales tax purposes, Buyer and Seller agree that at closing Buyer shall also pay to the auctioneer the sales taxes assessed by the State of Maine on the transfer of the Personalty and calculated based upon the ratio of the last assessed value of the Personalty and the Realty as determined by the Albion tax assessor.

Parties' agreement as to value of Personalty: \$ _____

(e) Buyer specifically and affirmatively waives the right to request any writ of possession from Seller and for the Property.

(f) conveyance is further subject to the terms and conditions of sale as announced at the public sale of the Property on March 9, 2010 or as set forth in the Terms and Conditions of Public Sale distributed by the auctioneer to registered bidders at the time of registration to bid.

3. Purchase Price. (a) Buyer hereby agrees to pay to Seller the sum of

_____ Dollars

(\$ _____) for the Property as follows:

(i) Five Thousand Dollars (\$5,000.00) at the time of the execution of this Agreement, all of which is non-refundable and the receipt thereof is hereby acknowledged by Seller;

(ii) an additional deposit equal (with the initial deposit) to ten percent (10%) of the purchase price and which additional deposit is due and payable to Keenan Auction Company within five (5) calendar days of the date of this agreement; and

(iii) the balance (after such deposits) is due and payable at the time of closing in cash or certified funds.

(b) Should Buyer fail to tender the balance due at closing and on or before the Closing Deadline, all deposit(s) from Buyer

shall be retained by Seller as liquidated damages but which shall not limit the right of Seller to enforce any other right or remedy against Buyer, including an action to compel specific performance.

4. **Risk of Loss.** The risk of loss or damage to the Property by fire or otherwise until closing and the delivery of a deed is assumed by Buyer.

5. **Broker.** Seller and Buyer agree that there is no real estate broker involved in this transaction, and that no one is due a commission in conjunction with the sale or purchase of the Property except to the auctioneer. Buyer is not liable, by virtue of this Agreement, for payment of any fees to the auctioneer.

6. **Non-reliance; Construction.** Buyer acknowledges that Buyer has not relied upon any oral or written representations of any employee, agent, or attorney for Seller not expressly set forth in this Agreement as a basis for Buyer's decision to execute this Agreement. In express recognition thereof, Buyer agrees that in the event of any ambiguity as to the meaning or intent of the terms or obligations set forth herein, or any documents executed in connection herewith, such ambiguous term or provision shall not be construed more favorably to one party than to another.

7. **Limitation on Buyer Damages.** Buyer agrees that in any dispute or action arising out of this Agreement, or the matters described herein, the damages to which Buyer may be due at any time and as against Seller for any reason shall be specifically limited to the amount of Buyer's deposit, repayable without interest, and that under no circumstances may such damages include any claim for punitive damages, lost profits or investment opportunities, or attorneys' fees.

8. **Waiver of Jury Trial, Arbitration.** (a) Buyer agrees that in the event of any dispute as between Buyer and Seller and relating to the subject matter of this Agreement, or the property hereby contemplated to be transferred by Seller to Buyer, such dispute shall (unless Seller shall have demanded arbitration as set forth in this paragraph) be tried before a single Justice of the Superior Court in Penobscot County sitting without a jury.

(b) Buyer further agrees that in any dispute or controversy with Seller as to the terms of this Agreement, or with respect to the matters described herein, and whether sounding in contract or tort, shall, at the election of Seller and at any time, be resolved by binding arbitration in accordance with the applicable provisions of the Maine Uniform Arbitration Act, at 14 M.R.S.A. § 5927 et seq. and as the same may be amended from time to time. Seller may further elect to submit less than all disputes or controversies as between Buyer and Seller to binding arbitration.

Nothing herein shall be construed as limiting the rights or remedies of Seller pursuant to this Agreement or any document or agreement as between Buyer and Seller and at any time, whether or not Seller shall have previously demanded such arbitration.

9. **Assignment.** Buyer may assign its rights under this Agreement to any third party by a writing approved by Seller, but such assignment may not mitigate or modify Buyer's obligations and liability to Seller pursuant to the terms hereof. Any such assignment, in a form approved by and acceptable to counsel for Seller, must be executed and delivered by Buyer and the proposed assignee(s) to counsel for Seller at least seven (7) calendar days prior to the date of closing.

10. **Amendments.** This Agreement contains the entire agreement of the parties, and it may not be amended subsequent to the execution hereof except by a writing executed by each of the parties to this Agreement.

11. **Binding Nature.** This Agreement shall be binding upon the respective heirs, successors, personal representatives and assigns of the parties hereto.

12. **Applicable Law.** This Agreement shall be enforced and construed in accordance with the laws of the State of Maine.

13. **TIME IS OF THE ESSENCE AND NOT A MERE RECITAL.** Should Buyer default in any obligation under this Agreement, Buyer agrees to indemnify and hold Seller harmless from any resulting or consequential loss, claim or damage of any kind whatsoever, including but not limited to any attorneys' fees incurred by Seller.

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement in duplicate original as of the day and year first above written.

Witness:

BANGOR SAVINGS BANK

By: _____
Gavin A. Robinson
Its Asst. Vice President

Buyer - SS#/EID

Witness:

Buyer - SS#/EID

Disclaimer: *Please read this Purchase and Sale Agreement carefully.* Neither Seller nor the auctioneer, nor their respective agents, employees or attorneys, make any warranties or representations of any kind to Buyer beyond those expressly set forth in this Agreement. Further, none of such persons offer any advice to you as to any aspect of the arrangement reflected by, or contemplated by, the foregoing.

Counsel for Seller: Michael S. Haenn, Esq., 88 Hammond Street,
Bangor, Maine 04401. 207-990-4905. www.haennlaw.com

RELEASE DEED

Bangor Savings Bank, a Maine corporation with a place of business in Bangor, County of Penobscot and State of Maine, for consideration paid, releases to _____ **[Buyer]** _____, certain real property situated in Albion, County of Kennebec and State of Maine, and more particularly bounded and described as follows:

A certain lot or parcel of land with buildings thereon, situate in the Town of Albion, County of Kennebec and State of Maine, more particularly bounded and described as follows, to wit: Beginning at a point on the easterly sideline of the road leading from China to Benton which is fifteen (15) feet northerly from the north side wall of the building used as a store and formerly known as the "Libby Brothers General Store," meaning and intending by the "north side wall" mentioned above to be the side wall of the main store and not intending by the use of said words to include that part of the building which is a projection of the store and which projection is located nearer than the line herein used to describe the first bound; thence from said beginning point and proceeding in an easterly direction and parallel with said north side wall of said store maintaining said width of fifteen (15) feet to a distance which is fifteen (15) feet longer than the present building to which there is attached a garage; thence from said point maintaining the distance of fifteen (15) feet from the east side of said garage in a southerly direction to an iron pipe located at a distance which is ten (10) feet north of a line projected in an east-west direction from the north wall of a house formerly occupied by Leroy W. Libby and formerly owned by Ida H. Robinson, and now owned by Carleton Marr, and fifteen (15) feet east of a line projected in a north-south direction from the east wall of the garage attached to said store building; thence proceeding in a southwesterly direction at an angle of thirty-seven (37) degrees west of a true north-south line for a distance of forty-eight (48) feet to an iron pin; thence in a southerly direction a distance of fifty (50) feet to an iron pin which iron pin is located on the north sideline of the Albion to Winslow Road; thence westerly along the northerly sideline of said Albion to Winslow Road to the point that intersects with the easterly line of the China to Benton Road; thence from said point of intersection northerly along the easterly sideline of said China to Benton Road to the point of beginning.

Excepting and reserving to Roderick A. Robinson, his heirs and assigns, a certain easement being more particularly described as follows: An easement of ingress and egress with motor vehicles from the Albion-Winslow Road, so-called to a certain lot or parcel of land conveyed to Roderick A. Robinson by warranty deed of Ida H. Robinson dated June 3, 1977 and recorded in the Kennebec County Registry of Deeds in Book 2003, Page 234, through a space lying between the northwest corner of a house situated on a certain lot conveyed by Ida H. Robinson to Carleton Marr and

the southeast corner of a garage attached to the store on the premises known as the Libby Brothers General Store, owned on July 18, 1977 by William McKenzie and Beverly McKenzie, such easement to be limited exclusively to motor vehicle use required for the repair, painting or improvement of the building located on the premises described in said deed from Ida H. Robinson to Roderick A. Robinson and providing further that such motor vehicle use shall not interfere with or impair the use by William McKenzie and Beverly A. McKenzie, their heirs and assigns, of the space over which the easement is hereby granted as a parking lot or for the purposes of ingress and egress related to the use of the premises owned on July 18, 1977 by William McKenzie and Beverly McKenzie, their heirs and assigns forever.

There is also included in this conveyance to the Grantees, their heirs and assigns, the right of access to the well situated on the Carleton Marr property, which furnished water for both the above described property and said Marr property, which rights are granted for the purpose of maintenance of both the well and the water lines supplying water to the store or for any purpose to insure continued and uninterrupted supply of water to said store property. If, at any time, it is necessary to make repairs on the well, to drill the well deeper, or to make repairs affecting both the house and store water lines, the expenses of such repair shall be borne equally between the Grantees, their heirs and assigns and the owner of the Carleton Marr Property, and said Carleton Marr heirs, successors and assigns.

Subject to all municipal liens and encumbrances, including but not limited to real property taxes, whether or not of record in the Kennebec Registry of Deeds. Further subject to all real estate transfer taxes.

For Grantor's source of title reference may be had to the mortgage deed of James E. Provost dated June 17, 2004 and recorded in the Kennebec Registry of Deeds in Vol. 8034, Page 94. The Grantor foreclosed said mortgage deed in an action commenced in the Superior Court for Kennebec County in the action docketed as *Bangor Savings Bank v. James E. Provost et al.*, Docket No. RE-2009-63, and pursuant to an Order and Judgment of Foreclosure entered by the said Court. This deed is a conveyance of all right, title and interest of the Grantor and all parties to said action and in and to the above property pursuant to 14 M.R.S.A. § 6323.

For purposes of compliance with 14 M.R.S.A. § 6323(1):
Newspaper in which publication occurred: *Central Maine Morning Sentinel*.

Dates of publication: February 7, 14, and 21, 2010.

Sale date: March 9, 2010. [If the public sale was continued from the date reflected in the notice of public sale as printed in such newspaper, such sale was continued in accordance with 14 M.R.S.A. § 6323(1)].

In witness whereof, Bangor Savings Bank has caused this instrument to be executed by Gavin A. Robinson, Its Asst. Vice President duly authorized as of this _____ day of March, 2010.

Witness:

BANGOR SAVINGS BANK

By: _____
Gavin A. Robinson
Its Asst. Vice President

State of Maine
Penobscot, ss.

March _____, 2010

Personally appeared the above-named Gavin A. Robinson, Asst. Vice President of Bangor Savings Bank, and acknowledged the foregoing instrument by him signed to be his free act and deed in said capacity and the free act and deed of said corporation.

Before me,

Notary Public
Printed Name:

RELEASE BILL OF SALE

Bangor Savings Bank, a Maine corporation with a place of business in Bangor, Maine, in consideration of the sum of \$_____, releases to ___[Buyer]___, all of its right, title and interest in and to the following personal property:

All furniture, fixtures, machinery and equipment as may be located at or within the real estate situated generally at 14 Main Street in Albion, Maine, and which may be subject to a security interest granted by James E. Provost to Grantor.

Subject to all personal property and sales taxes assessed against the said personal property.

This conveyance is without warranties or covenants of any kind whatsoever, including but not limited to warranties of title, merchantability, or fitness for a particular purpose. *The transfer of the said property is on a strictly "AS IS, WHERE IS" basis.*

In witness whereof, Bangor Savings Bank has caused this instrument to be executed by Gavin A. Robinson, Its Asst. Vice President duly authorized this _____ day of March, 2010.

Witness:

BANGOR SAVINGS BANK

By: _____
Gavin A. Robinson
Its Asst. Vice President

NOTICE OF PUBLIC SALE

14 M.R.S.A. § 6323

Notice is hereby given that in accordance with an Order and Judgment of Foreclosure dated January 13, 2010 and entered by the Superior Court for Kennebec County in the action entitled *Bangor Savings Bank v. James E. Provost et al.*, Docket No. RE-2009-63, and wherein the court adjudged a foreclosure of mortgage deed granted by James E. Provost dated June 17, 2004 and recorded in the Kennebec Registry of Deeds in Vol. 8034, Page 94; the period of redemption from said judgment having expired; a public sale will be conducted on March 9, 2010 commencing at 3:00 p.m. at 14 Main Street, Albion, Maine. The property is also described on the Albion Tax Maps as Map ____, Lot _____. Reference should be had to said mortgage deed for a more complete legal description of the property to be conveyed.

The public sale will also include all furniture, fixtures, machinery and equipment owned by James E. Provost and located on or within the said real estate, and which will be sold together with the real estate as a sale in the entirety.

The property will be sold by public auction subject to all outstanding municipal assessments. The deposit to bid for the property is \$5,000.00, to increased to 10% of the bid amount within five calendar days of the sale, and with the balance after such deposits due and payable within 45 days of the public sale. Conveyance of the property will be by release deed and release bill of sale. All other terms will be announced at the public sale.