

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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FEDERAL DEPOSIT INSURANCE	)	
CORPORATION, in its capacity as	)	
Receiver of COMFED SAVINGS BANK,	)	CIVIL ACTION NO. 96-11866-EFH
F.A.,	)	
Plaintiff,	)	
	)	
v.	)	
	)	
RHETTA B. SWEENEY, JOHN	)	
SWEENEY, JOHN DOES 1-5,	)	
	)	
Defendants.	)	

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MOTION FOR SUMMARY JUDGMENT OF PLAINTIFF  
FEDERAL DEPOSIT INSURANCE CORPORATION,  
AS RECEIVER OF COMFED SAVINGS BANK, F.A.

Pursuant to Fed. R. Civ. P.56, plaintiff Federal Deposit Insurance Corporation, as Receiver of ComFed Savings Bank, F.A. (the "FDIC"), requests that this Court enter judgment for possession in its favor as a matter of law against defendants Rhetta B. Sweeney and John Sweeney (collectively, the "Sweeneys").

The FDIC states in support. hereof as follows:

1. On November 29, 1994, the FDIC<sup>1</sup>'s predecessor-in-interest, the Resolution Trust Corporation, as Receiver of ComFed Savings Bank, F.A. (the "RTC") conducted a foreclosure sale of the real property known and numbered as 24 Meyer Road, Hamilton, Massachusetts (the "Subject Property"). The sale complied with all Massachusetts statutory

requirements. M.G.L. C. 244, §§ 11-17B. The RTC was high bidder at the sale and became the owner of the Subject Property.

2. Pursuant to the provisions of 12 U.S.C. § 1441a(m)(1), the FDIC statutorily succeeded the **RTC** on December 31, 1995. As a matter of law, the FDIC succeeded to all of the rights, title, and interest of the RTC, including ownership of the Subject Property.

3. Defendants Rhetta B. Sweeney and John Sweeney occupy the Subject Property and refuse to vacate. As a result, the FDIC has brought this summary process action.

M.G.L. c. 239, §§ 1, 3.

4. The Sweeneys are estopped from denying that the FDIC had the right to foreclose upon the Subject Property. *See Sweeney V. Resolution Trust Corporation*, 16 F.3d 1(1st Cir. 1994), *cert. denied*, 115 S.Ct. 291(1994), *petition for reh'g denied*, 115 S.Ct. 785 (1995); *see also* Judgment entered in *RTC V. Rhetta B. Sweeney as Trustee of the Maple Leaf Realty Trust*, 93-111259-H and Order of the United States Bankruptcy Court dated October 20, 1994, granting the RTC's Motion for Relief From the Automatic Stay.

5. The only defense available to the Sweeneys in this action is that the foreclosure sale did not comport with the statutory requirements of M.G.L. c. 244, §§ 11-17B. *Wayne Investment Corporation v. Abbott*, 350 Mass. 775 (1966). As set forth in the Affidavit of Dennis Higgins, recorded with the Essex South District Registry of Deeds and filed with the Essex South Registry District of the Land Court, attached to the Affidavit of Joseph F. Shea, filed herewith, as Exhibit A, the FDIC did comply with such requirements.

WHEREFORE, for all of the above-stated reasons and as is more fully set forth in a Memorandum of Law filed herewith, the FDIC moves the Court to enter judgment for the FDIC and against the Sweeneys as a matter of law for possession of the Subject Property and, pursuant to M.G.L. C. 239, I 3, to award the FDIC its costs incurred in bringing this action.

FEDERAL DEPOSIT INSURANCE  
CORPORATION, in its capacity as Receiver of  
COMFED SAVINGS BANK, F.A.,

By its attorneys,

  
\_\_\_\_\_  
Joseph F. Shea (BBO #555473)

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Dated:

: 1/27/97

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### **CERTIFICATE OF SERVICE**

I hereby certify that on this day a true copy of the above document was served upon the attorney of record for each party ~~by mail~~/by hand

attorney of record for each party ~~by mail~~/by hand  
Date: 1/27/97 