

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

Roger D. Fisher,)
)
Plaintiff,)

**ORDER AND JUDGMENT OF
FORECLOSURE AND SALE
(Deficiency Waived)**

v.)

C.A. No.: 2009-CP-42-4215

Upstate Builders of Spartanburg, LLC,)
Stephen R. McCarter and Michael Shawn)
Dodd, Gibson Services, Inc., Builder's)
FirstSource-Southeast Group, LLC,)
Branch Banking and Trust Company,)
Defendant(s).)

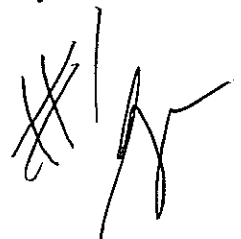
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MARC KITCHENS

TO:

Howard R. Kinard, Esq. Johnson, Smith, Hibbard & Wildman Law Firm, L.L.P. Post Office Drawer 5587 Spartanburg, South Carolina 29304 Atty for Plaintiff	Albert V. Smith, Esq. 410 Magnolia Street Spartanburg, SC 29303 Attorney for Gibson Services, Inc.	Wallace A. Mullinax, Jr. Esq. 307 Pettigru St. Greenville, SC 29601 Attorney for Builder's FirstSource-Southeast Group, LLC
Stephen R. McCarter, Individually and as Registered Agent for Upstate Builders 1205 Turpin Road Inman, South Carolina 29349	Mr. Michael Shawn Dodd 1205 Turpin Road Inman, South Carolina 29349	Charles D. LeGrand, Esq. 310 Mills Ave., Suite 103 Greenville, SC 29605 Atty for BB&T

Pursuant to Rule 53 SCRC^P, the above-titled matter was referred to the undersigned to make appropriate findings of fact and conclusions of law with authority to enter a final judgment.

Pursuant to said Order of Reference, a hearing was held on November 12, 2009, attended by




Howard R. Kinard, attorney for the Plaintiff Roger D. Fisher. From the testimony, other evidence and stipulations, I report, find, conclude and order as follows:

FINDINGS OF FACT

1. The Lis Pendens was filed July 31, 2009.
2. The Summons and Complaint were filed on July 31, 2009.
3. Proper service of process was made upon the Defendants named in this action as is shown in the records by the filed Affidavit of Service.
4. The Defendants, either personally or by and through its attorney(s) of record, were timely notified of the time, date and place of the hearing in this matter.
5. According to the record, the individually named Defendants in default are not in military service of the United States and are not entitled to the protection of the Soldiers' and Sailors' Civil Relief Act of 1940, nor any amendments thereto.

DEBT OBLIGATION

6. For value received, Defendants Upstate Builders of Spartanburg, LLC, and Stephen R. McCarter, individually and Michael Shawn Dodd, individually (hereinafter collectively referred to as the "Borrowers") made, executed and delivered to Fisher, as mortgagee, a written promissory note originally dated October 4, 2007, as amended, modified and/or renewed by a subsequent promissory note dated October 3, 2008, (hereinafter collectively the "Note"). Pursuant to the terms of the Note, as last modified, the Borrowers promised to pay to Fisher, as mortgagee, the principal sum of Three Hundred Fifty Thousand and 00/100ths (\$350,000.00) Dollars in accordance with the repayment terms set forth therein. A copy of said Note is attached to the Complaint as Exhibit "A" and incorporated herein by reference.

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7. To induce Fisher to make the loan and to secure payment of the principal and interest on the Note, Upstate Builders of South Carolina, LLC executed and delivered to Fisher a Mortgage dated October 4, 2007 and recorded October 9, 2007 in Book 3979 at page 247 in the Office of the Register of Deeds for Spartanburg County, South Carolina. The Mortgage encumbers certain real property located in Spartanburg County, South Carolina generally described as Lot No. 78 of the Reserve at Carriage Gate, Section III, 750 September Chase, Wellford, South Carolina, and as described in the Mortgage legal description (hereinafter the "Mortgaged Property"). A copy of said Mortgage is attached to the Complaint as Exhibit "B" and incorporated herein by reference.


8. The Mortgage constitutes a first priority lien on the Mortgaged Property.

9. Fisher is the present owner and holder of the aforesaid Note and Mortgage.

10. That Borrowers are now and have been in default in the payments of the Note and Mortgage.

11. In and by the terms of the Note and Mortgage, it is provided among other things, that upon failure to pay an installment of either principal or interest or any portion thereof when due, or if any of the conditions of the Note and Mortgage, are not complied with, then the whole principal sum and accrued interest shall, at the option of the legal holder thereof, become at once due and payable and collectible by legal action.

12. In and by the terms of the Note and Mortgage, should the debt secured thereby or any part thereof be placed in the hands of any attorney at law for collection by suit or otherwise, all costs and expenses incurred by the Plaintiff and a reasonable attorney's fee, shall thereupon become due and payable, at the option of the Plaintiff, as part of the debt secured thereby.

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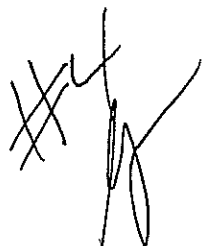
13. In and by the terms of the Note and Mortgage, if the payment of taxes and/or insurance is made by the mortgagee, the amount of said taxes and/or insurance should thereupon become due and payable as part of the debt secured thereby.

14. Payments on the Note and Mortgage have not been made as provided for in the Note and Mortgage. Any notice required to be give the Defendants in default was timely given and any time for opportunity to cure has passed. The Plaintiff, as holder thereof, has elected to require immediate payment of the entire amount due thereon and has placed the Note and Mortgage in the hands of an attorney for collection.

15. After review of the Affidavits by the Plaintiff's attorneys, the terms of the Note and Mortgage, and based on my knowledge of the nature of this foreclosure action, I find the sum of Two Thousand Five Hundred Three and 50/100ths (\$2,503.50) Dollars as a reasonable fee to allow for the Plaintiff's attorney for services performed and the costs advanced anticipated to be performed until final adjudication of the within action under the Note and Mortgage and until final sale of the Mortgaged Property.

16. The amount due and owing on the Note, with interest at the rate provided in the Note, and other costs and expenses of collection, including a reasonable attorney's fee, secured by the Mortgage, is as follows:

a.	Principal amount due as of November 12, 2009 on the Note and Mortgage:	\$350,000.00
b.	Interest accrued as of November 12, 2009:	\$ 0
c.	Insurance paid by Plaintiff on behalf of Borrowers as of November 12, 2009:	\$ 1,409.11
d.	Attorney's Fees, plus costs:	\$ 2,503.50
f.	Total debt secured by the Note and Mortgage including	



interest to date shown:

\$353,912.61

17. The Plaintiff shall also be entitled to collect any and all amounts advanced to protect its collateral including but not limited to taxes and/or insurance.

Interest shall continue to accrue at the rate provided for in the Note and Mortgage from the date provided in paragraph (a) hereinabove through the date of final judgment, to be added to the above stated total debt provided in paragraph (e) hereinabove and secured by the Mortgage after this date of Judgment.

18. Plaintiff is seeking foreclosure of the Mortgage and hereby waives a deficiency judgment against the Borrowers.

19. Pursuant to the Order of the Honorable Jean Hofer Toal, Chief Justice of the South Carolina Supreme Court, dated May 4, 2009, in the matter identified as *In Re Federal National Mortgage Association ("Fannie Mae") Loans Subject to Foreclosure Sale*, and that certain *Administrative Order (re: Mortgage Foreclosures and the Home Affordable Modification Program (HMP))* issued by the Honorable Jean Hofer Toal, Chief Justice of the South Carolina Supreme Court dated May 22, 2009, the Mortgaged Property which is the subject of this action, is commercial property and therefore Homeowner Affordability and Stability Plan, The Home Affordable Modification Program and the United States Treasury Supplemental Directive 09-01 (hereinafter collectively as "HMP") is inapplicable.

20. Bank is entitled to an Order from the Court finding that this loan is not subject to modification under the HMP.

CONCLUSIONS

1. That the loan which is the subject of this action is not subject to the HMP;

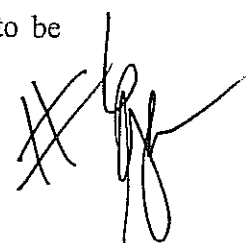


2. The Plaintiff, whose Mortgage is a valid first mortgage lien on the Mortgaged Property, is granted a Judgment of Foreclosure of the Mortgage;

3. That there is due to the Bank, as is set forth in my findings, on the obligations of the Note and Mortgage the sum of Three Hundred Fifty-Three Thousand Nine Hundred Twelve and 61/100 (\$353,912.61) Dollars as of the 12th day of November, 2009, together with any amounts the Bank may be entitled to as stated in the findings of fact, together with interest on said amount at the interest rate provided in the Note and Mortgage from the date of this Order to the sale of the property; and the Plaintiff shall have judgment therefore against Upstate Builders of Spartanburg, LLC, Stephen R. McCarter and Michael Shawn Dodd. The Clerk of Court for Spartanburg County is directed to forthwith enter and docket such judgment in the Clerk's Office pursuant to Section 29-3-650, Code of Laws of South Carolina (1976), as amended;

4. That Upstate Builders of Spartanburg, LLC, Stephen R. McCarter and Michael Shawn Dodd, before the date of the sale of the property described herein, pay to the Plaintiff, or the Plaintiff's attorney, the amount of the Plaintiff's debt at the aforesaid, together with the cost and disbursement of this action;

5. That on default of the payment at or before the time herein indicated, the Mortgaged Property, be sold by the Master-in-Equity, at public auction, at the Spartanburg County Judicial Center, Spartanburg, South Carolina, on some convenient sales day hereafter (and should the regular day of judicial sales fall on a legal holiday, then, in such event the sales day shall be on Tuesday next succeeding such holiday), on the following terms, that is to say for cash; the Master-in-Equity will require a deposit of 5% of the amount of the bid (in cash or equivalent), at the time of the sale, same to be applied on the purchase price only upon compliance with the bid, but in case on non-compliance within twenty (20) days, same to be

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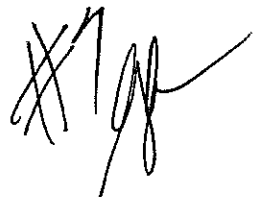
forfeited and applied to the cost and Plaintiff's debt. If the Plaintiff is a successful bidder at said sale, for a sum not exceeding the amount of cost and the indebtedness of the Plaintiff in full, the Plaintiff may pay into the Master-in-Equity only the amount of the cost, crediting the balance of the bid on the Bank's indebtedness;

6. Since a personal or deficiency judgment has been waived, the bidding at the sale will not remain open after the date of the sale, but compliance with the bid shall be made immediately.

7. That, upon motion of the Plaintiff's attorney at the merits hearing, I order the pleadings to be amended to conform to the evidence presented;

8. That this Master-in-Equity give notice by advertisement, according to the law, of the time and place of such sale, and the terms thereof; that this Master-in-Equity, do execute to the purchaser or purchasers, a deed to the premises sold; as a Bank or any other party to this action, may become a purchaser at such sale and that if, upon such sale being made, the purchaser, or purchasers, should fail to comply with the terms thereof within twenty (20) days after the sale, then the Master-in-Equity may advertise the said premises for sale on the next, or some other subsequent sales day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured. In the event the Plaintiff is a successful bidder, at its option, or option of its assignee, the deed may be taken subject to the payment by grantee of any taxes or any assessments constituting a lien against the mortgaged property sold under this Order and hereinafter more fully describe;

9. That the Master-in-Equity will apply the proceeds of the sale as follows:

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FIRST, to the payment of the amount of the cost and expenses of this action, the recommended attorney's fees and liens for taxes due and payable upon the mortgaged property so sold, and any taxable disbursements by the attorneys in this action.

NEXT, to the payment to the Plaintiff or the Plaintiff's attorney of the amount of the Plaintiff's debt and interest or so much thereof as the purchase money will pay the same;

NEXT, any surplus be held pending further Order of this Court; and

10. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon making of the sale of such Mortgaged Property, as hereby ordered, and execution and delivery to the purchaser of a deed to the premises, the said purchaser or purchasers, be let into possession of the premises on the production of the deed; and the Sheriff of Spartanburg County shall put the holder of the deed into possession of the premises and shall eject and remove from the premises the occupants of the property sold, together with all personal property thereon in accordance with applicable law.

11. AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each Defendant named herein and all persons whosoever claiming under the Defendants, be forever barred and foreclosed of all right, title, interest and equity or redemption in the said mortgaged premises so sold, or any part thereof; and

12. The Mortgaged Property ordered to be sold is particularly described in **Exhibit "A"** attached hereto and incorporated herein by reference.

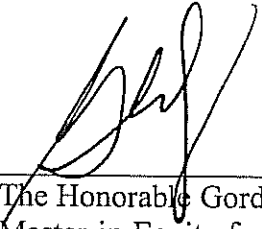
13. AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the deed of conveyance made pursuant to this sale shall be indexed in the Grantor Index by the Register of Deeds in the name of the owner of record of mortgaged property immediately prior to the

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execution of the deed, as well as in the name of the undersigned Master-in-Equity, who executed such deed as grantor;

14. The undersigned Master-in-Equity will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a writ of assistance and disposing of any surplus funds, pursuant to Rule 71(C) SCRPC; and

IT IS SO ORDERED by virtue of the powers granted me by the Order of Reference described herein and the laws of South Carolina.



The Honorable Gordon G. Cooper,
Master-in-Equity for Spartanburg County

November 12, 2009

Spartanburg, South Carolina

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EXHIBIT "A"
(Legal Description)

All that certain piece, parcel or lot of land, situate, lying and being in the State of South Carolina, County of Spartanburg, being shown and designated as Lot No. 78 fronting on September Chase, containing .52 acres, more or less, as shown on survey prepared for The Reserve at Carriage Gate, Section III by Souther Land Surveying, revised July 12, 2007 and recorded in Plat Book 161 at page 915 in the RMC Office for Spartanburg County, SC.

This being the same property conveyed to Upstate Builders of Spartanburg, LLC by deed of Roger D. Fisher, dated October 4, 2007 and recorded October 9, 2007 in Deed Book 89-T at Page 683 in the Register of Deeds Office for Spartanburg County.