

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

First National Bank of the South a/k/a)
First National Bank of the South d/b/a)
First National Bank of Spartanburg Div of)
First National Bank of the South a/k/a)
First National Bank of the South d/b/a)
First National Bank of Spartanburg,)

**MASTER'S ORDER AND JUDGMENT OF
FORECLOSURE AND SALE**

**(Deficiency Demanded Against Defendants
Emily Easler Handy a/k/a Emily E. Handy a/k/a
Emily Easler-Handy and T. Glenn Easler a/k/a
Thomas Glenn Easler)**

Plaintiff,

C.A. No.: 2009-CP-42-6321

v.

Emily Easler Handy a/k/a Emily E.)
Handy a/k/a Emily Easler-Handy; T.)
Glenn Easler a/k/a Thomas Glenn Easler;)
Carolina Grounds, Inc.; and Lakeland)
Construction Finance, LLC;)

Defendants.)

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CLERK OF COURT
Spartanburg, SC

TO:

Kristin Burnett Barber
Johnson, Smith, Hibbard and Wildman
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Attorney for Plaintiff

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Attorney for Defendant
Lakeland Construction Finance, LLC

Pursuant to Rule 53 SCRPC, 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 February 10, 2010, attended by

Kristin Burnett Barber, attorney for Plaintiff First National Bank of the South a/k/a First National Bank of the South d/b/a First National Bank of Spartanburg Div of First National Bank of the South a/k/a First National Bank of the South d/b/a First National Bank of Spartanburg (the "Bank"), and from the testimony, other evidence and stipulations, I report, find, conclude and order as follows:

FINDINGS OF FACT

1. The Lis Pendens was filed November 19, 2009.
2. The Summons and Complaint were filed on November 19, 2009.
3. Proper service of process was made upon the Defendants named in this action as is shown in the records by the filed Affidavits of Service and Acceptance of Service.
4. The Defendants, either personally or by and through their attorneys of record, were timely notified of the time, date and place of the hearing in this matter.
5. According to the record, no individual Defendant in default is in the military service of the United States of America, as contemplated under the Soldiers' and Sailors' Relief Act of 1940, as amended.

DEBT OBLIGATION

6. For value received, Emily Easler Handy a/k/a Emily E. Handy a/k/a Emily Easler-Handy ("Handy") made, executed and delivered to the Bank a written promissory note dated March 6, 2008, as amended, modified and/or renewed by written instrument dated September 19, 2008 (hereinafter collectively the "Note"). Pursuant to the terms of the Note, as last amended, modified and/or renewed, Handy promised to pay to the Bank the principal sum of Eighty Thousand Six Hundred Twenty-Five and no/100ths (\$80,625.00) Dollars, together with interest on the outstanding principal balance from September 19, 2008 at the rate of six and one-half (6.500%) percent per year until paid in full. Handy agreed to pay the Note as follows: accrued

interest with the principal and the principal on March 18, 2009. A copy of all documents comprising the Note are attached to the Complaint as Exhibit "B" and incorporated herein by reference.

7. To further induce the Bank to accept the Note and to further secure payment of the Note, T. Glenn Easler a/k/a Thomas Glenn Easler ("Easler") (sometimes referred to as the "Guarantor") executed and delivered to the Bank a written Guaranty dated March 6, 2008 (hereinafter "Guaranty 1"). Pursuant to the terms of Guaranty 1, Easler absolutely and unconditionally guaranteed to the Bank, as Lender, the payment and performance of the debt, liability and obligation of Handy, as Borrower, evidenced by or arising out of the Note. A copy of Guaranty 1 is attached to the Complaint as Exhibit "C" and incorporated herein by reference.

8. To further induce the Bank to accept the Note and to further secure payment of the Note, Easler executed and delivered to the Bank a written Guaranty dated September 19, 2008 (hereinafter "Guaranty 2"). Pursuant to the terms of Guaranty 2, Easler absolutely and unconditionally guaranteed to the Bank, as Lender, the payment and performance of the debt, liability and obligation of Handy, as Borrower, evidenced by or arising out of the Note. A copy of Guaranty 2 is attached to the Complaint as Exhibit "D" and incorporated herein by reference.

9. To induce the Bank to make the loan and to secure payment of the principal and interest on the Note, Handy executed and delivered to the Bank a Real Estate Mortgage (With Future Advance Clause) dated March 6, 2008 and recorded March 10, 2008 in Mortgage Book 4051 at page 036 in the Office of the Register of Deeds for Spartanburg County, South Carolina, encumbering certain real property located at 100 and 102 Stoneridge Drive, Chesnee, South Carolina and generally described as Lots 1 and 2, on a plat prepared for Emily E. Handy by Huskey & Huskey, Inc., PLS, dated January 18, 2006 and recorded in Plat Book 159 at page 380, in the Office of the Register of Deeds for Spartanburg County, South Carolina (hereinafter the

Mortgaged Property”) and said property more particularly described in said Mortgage (hereinafter “the Mortgage”) and in **Exhibit “A”** legal description, attached hereto and incorporated herein by reference. A copy of the Mortgage is attached to the Order as Exhibit “E” and incorporated herein by reference.

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

11. The Bank is the present owner and holder of the aforesaid Note, Guaranty 1, Guaranty 2 and Mortgage.

12. That Handy and Easler are now and have been in default in the payments of the Note, Guaranty 1, Guaranty 2 and Mortgage.

13. In and by the terms of Note, Guaranty 1, Guaranty 2 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, Guaranty 1, Guaranty 2 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.

14. In and by the terms of the Note, Guaranty 1, Guaranty 2 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 Bank and a reasonable attorney’s fee, shall thereupon become due and payable, at the option of the Bank, as part of the debt secured thereby.

15. In and by the terms of the Note, Guaranty 1, Guaranty 2 and Mortgage, if the payment of taxes and/or insurance is made by the Bank as Mortgagee, the amount of said taxes and/or insurance should thereupon become due and payable as part of the debt secured thereby.

16. Payments on the Note, Guaranty 1, Guaranty 2 and Mortgage have not been made as provided for in the Note and Mortgage. Any required notice of the Defendants in default was timely given and any time for opportunity to cure has passed. The Bank, as holder thereof, has elected to require immediate payment of the entire amount due thereon and has placed the Note, Guaranty 1, Guaranty 2 and Mortgage in the hands of an attorney for collection.

17. After review of the Affidavits by the Bank's attorneys, the terms of the Note and Mortgage, and based on my knowledge of the contested nature of this foreclosure action, I find the sum of Four Thousand Five Hundred Eighty-Nine and 92/100ths (\$4,589.92) Dollars as a reasonable fee to allow for the Bank'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.

18. 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 February 10, 2010 on the Note and Mortgage:	\$84,710.99
b.	Interest accrued as of February 10, 2010	\$ 7,518.33
c.	2008 Delinquent Spartanburg County Ad Valorem Taxes paid by Bank:	\$ 823.34
d.	Appraisal Fee paid by Bank:	\$ 600.00
e.	Attorney's Fees, plus costs:	\$ 4,589.92
f.	Total debt secured by the Note and Mortgage including interest to date shown:	\$98,242.58

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 (f) hereinabove and secured by the Mortgage after this date of Judgment.

19. Bank is seeking foreclosure of the Mortgage and does not waive but specifically demands deficiency judgment against Defendants Emily Easler Handy a/k/a Emily E. Handy a/k/a Emily Easler-Handy; T. Glenn Easler a/k/a Thomas Glenn Easler, jointly and severally.

20. Said information having been obtained from the public records of Spartanburg County Register of Deeds Office and the Office of the Clerk of Court for Spartanburg County, the Defendant(s) named below has or may claim to have come interest in or lien as described below upon the Mortgaged Property, which is the subject of this action, but that any such interest or lien is junior and subordinate to the Note, Guaranty 1, Guaranty 2 and Mortgage as described hereinabove:

a. Defendant Easler by virtue of that certain instrument entitled Mortgage of Real Estate given by Emily Easler-Handy to Easler in the amount of Fifty-Thousand and no/100ths (\$50,000.00) Dollars dated July 22, 1992 and recorded August 25, 1992 in Mortgage Book 1507 at page 126 in the Office of the Register of Deeds for Spartanburg County, South Carolina (the "Easler Mortgage"). The owner of the Mortgaged Property is Emily E. Handy by virtue of that certain deed from David Lewis Elliott dated December 16, 1987 and recorded December 17, 1987 in Deed Book 53-U at page 964 in the Office of the Register of Deeds for Spartanburg County, South Carolina and Emily Easler Handy by virtue of that certain deed from Nancy Kelly Harris dated December 29, 2000 and recorded January 2, 2001 in Deed Book 73-E at page 291 in the Office of the Register of Deeds for Spartanburg County, South Carolina. A copy of said Deeds are attached to the Complaint collectively as Exhibit "G" and incorporated

herein by reference. The Easler Mortgage was given by Handy in the name of “Emily Easler-Handy” and not in the name of either “Emily E. Handy” or “Emily Easler Handy” and as such, said Easler Mortgage does not attach nor does it encumber the Mortgaged Property. The Bank is entitled to an order from this Court finding that the Easler Mortgage does not attach to or encumber the Mortgaged Property and canceling the same for the public record;

b. Defendant Carolina Grounds, Inc. by virtue of certain instrument obtained against Emily Easler Handy d/b/a Omni Properties filed April 6, 2009 in the Office of the Clerk of Court for Spartanburg County in Judgment Roll Number 2009-CP-42-0981 in the original amount of Six Thousand Two Hundred Eighty-Three and 15/100ths (\$6,283.15) Dollars;

c. Defendant Lakeland Construction Finance, LLC by virtue of that certain foreclosure action filed in Case Number 2008-CP-42-5331 on October 14, 2008 in the Office of the Clerk of Court for Spartanburg County, South Carolina against Emily Easler-Handy, Individually and The Estates of Lake Blalock, LLC in which Lakeland Construction seeks a deficiency judgment against Handy. Said action is still pending;

21. Pursuant to the Order of the Honorable Jean Hoefler 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 Hoefler Toal, Chief Justice of the South Carolina Supreme Court dated May 22, 2009. Pursuant to the Order of the Honorable Jean Hoefler 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 Hoefler 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 the 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.

22. Based on same, 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. That the Mortgage of Real Estate given by Emily Easler Handy to T. Glenn Easler a/k/a Thomas Glenn Easler in the original principal amount of Fifty Thousand and no/100ths (\$50,000.00) Dollars, dated July 22, 1992 and recorded August 25, 1992 in Mortgage Book 1507 at page 126 in the Office of the Register of Deeds for Spartanburg County, South Carolina does not attach nor encumber the Mortgaged Property and the same is hereby cancelled for the public record;

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

4. That there is due to the Bank, as is set forth in my findings, on the obligations of the Note, Guaranty 1, Guaranty 2 and Mortgage the sum of Ninety-Eight Thousand Two Forty-Two and 58/100ths (\$98,242.58) Dollars as of the 10th day of February, 2010, 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, Guaranty 1, Guaranty 2 and Mortgage from the date of this Order to the sale of the property; and the Bank shall have judgment therefore against Defendants Emily Easler Handy a/k/a Emily E. Handy a/k/a Emily Easler-Handy; T. Glenn Easler a/k/a Thomas Glenn Easler, jointly and severally. 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;

5. That Handy and Easler, before the date of the sale of the property described herein, pay to the Bank, or the Bank's attorney, the amount of the Bank's debt at the aforesaid, together with the cost and disbursement of this action;

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

7. Since a deficiency judgment is demanded, the bidding at the sale will remain open for thirty (30) days following the sale as provided by law in such cases;

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

9. 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 Bank 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 described;

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

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 Bank or Bank's attorney of the amount of the Bank'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

11. That if the proceeds of the sale be insufficient to pay the amounts herein before authorized to be paid out of said proceeds, with the interest, cost, expenses and taxes as aforesaid, the parties hereto are entitled to a judgment deficiency have judgment therefore against Defendants Emily Easler Handy a/k/a Emily E. Handy a/k/a Emily Easler-Handy; T. Glenn Easler a/k/a Thomas Glenn Easler, jointly and severally.

12. 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;

13. 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

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

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

16. 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) SCRCPP; 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.

5/
The Honorable Gordon G. Cooper,
Master-in-Equity for Spartanburg County

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February 10, 2010

Spartanburg, South Carolina

EXHIBIT "A"
(Legal Description)

All that certain piece, parcel or lot of land, with improvements thereon, lying, situate and being in the State of South Carolina and County of Spartanburg, being shown and designated as Lot Nos. 1 and 2, on a plat prepared for Emily E. Handy by Huskey & Huskey, Inc., PLS, dated January 18, 2006 and recorded in Plat Book 159 at page 380, in the Office of the Register of Deeds for Spartanburg County, South Carolina. For a more complete and particular description of the premises, reference is hereby made to the above referred to plat and record thereof.

This is a portion of the same property conveyed to Emily E. Handy a/k/a Emily Easler Handy by deed of David Lewis Elliott dated December 16, 1987 and recorded December 17, 1987 in Deed Book 53-U at page 964 in the Office of the Register of Deeds for Spartanburg County, South Carolina and a portion of the same property conveyed from deed of Nancy Kelly Harris recorded January 2, 2001 in Deed Book 73-E at page 291 in the Office of the Register of Deeds for Spartanburg County, South Carolina, reference to which deed and the aforesaid plat is hereby specifically made for a more detailed description of the property covered hereby.

Address: 100 and 102 Stoneridge Drive
Chesnee, South Carolina
TMS: 2-32-00-051.04

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