

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Robert E. Libby and Sheila D.)
Libby,)

Plaintiff,)

vs.)

Gerald T. Pitts, and Gerald C. Pitts,)
Defendants.)

ORDER FOR FORECLOSURE
AND SALE
2009-CP-42-5678

FILED
CLERK OF COURT
2010 JAN 14 AM 9:50
MARC KITCHENS

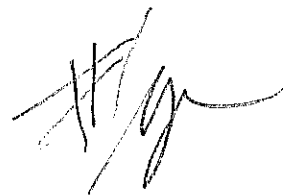
This action was brought by Robert E. Libby and Sheila D. Libby seeking to assert their rights in the real property described below and to foreclose a mortgage on the subject property. Gerald T. Pitts and Gerald C. Pitts were joined as Defendants and were properly served and given notice of the proceedings. A hearing was held on January 13, 2010. Gerald T. Pitts was present; his attorney, David C. Alford, contacted the court prior to the hearing and advised that his client had no opposition to the foreclosure. Gerald C. Pitts was not present but was represented by his attorney, Albert V. Smith. Albert V. Smith informed the court that his client did not object to the foreclosure.

Based upon the records in the Register of Deed's Office and the documents presented, the court finds as follows:

1. The real property which is the subject of this action is currently owned by Gerald T.

Pitts and is more particularly described as follows:

All that tract or parcel of land near New Prospect, located on Rainbow Lake Road, Spartanburg, South Carolina, and being shown and designated as 7.06 acres, more or less, on a plat of survey made for Gerald Pitts by Grambling Brothers Surveying, Inc., dated March 28, 1977, recorded April 4, 1997 in Plat Book 137, page 306, Register of Deeds for Spartanburg County. For a more complete and particular description of the said property, reference is hereby made to the said Plat.



Less and except all that certain all 4.00 acres, more or less, conveyed to Chris Green in Deed Book 84-J at page 735, Register of Deeds for Spartanburg County.

This being the same property conveyed to Gerald C. Pitts from Janice H. Pitts dated May 28, 2005 and recorded June 13, 2005 in Deed Book 83-F at page 498 in the Register of Deeds for Spartanburg County.

The Tax Map Number of the property is 1-17-00-041.00

2. Gerald T. Pitts purchased this property from Gerald C. Pitts on November 8, 2007, reference is made to deed recorded in Deed Book 89-Z, page 487, Register of Deeds for Spartanburg County.

3. Subsequent to purchasing the property, Gerald T. Pitts obtained a loan from Myers Park Mortgage on November 29, 2007, and the subject property was given as security for the loan; the loan was in the amount of \$132,300.00, and reference is made to mortgage recorded in Mortgage Book 4005, page 140, Register of Deeds for Spartanburg County.

4. On August 4, 2008, Gerald C. Pitts brought an action against Gerald T. Pitts alleging, among other things, breach of contract and resulting trust. A Lis Pendens was filed on the subject property on August 4, 2008. (Reference is made to 2008-LP-42-16932).

5. Gerald T. Pitts filed responsive pleadings, to include a counterclaim. This action is still pending and the rights between the parties are not affected by this proceeding. The Lis Pendens filed by Gerald C. Pitts was after the recording of the mortgage of Myers Park Mortgage, and therefore, does not have priority over the said mortgage and has no impact on the subject foreclosure action.

6. On April 9, 2009, Myers Park Mortgage assigned its mortgage to Robert E. Libby, reference is made to Mortgage Book 4236, page 870, Register of Deeds for Spartanburg County.

7. Since assigning the mortgage to Robert E. Libby, no payments have been made on the mortgage.



8. The unpaid balance as of January 13, 2010 is \$139,916.11; the per diem is \$25.84 per day.

9. The Promissory Note which gave rise to the subject mortgage provided that if collection proceedings were commenced, reasonable attorney's fees would be awarded. An Affidavit summarizing time and charges was presented to the court, and the court finds that the amount of \$4,972.00 is reasonable and approves the same.

10. Currently, the house is vacant, and the Plaintiffs requested to have the right to take immediate possession and secure the house. The court finds that this is reasonable and authorizes this to be done. The costs associated with changing the locks to secure the property shall be added to the unpaid balance of the mortgage when an appropriate bill has been presented to and approved by the court.

11. The loan which is the subject of this action is not subject to the HMP.

12. The Plaintiff is waiving the right to deficiency judgment.

Based on the above findings of fact,

IT IS ORDERED that the subject Note is in default and the mortgage can be foreclosed.

Further,

IT IS ORDERED that the subject property shall be sold at the March Sales Day and prior to that, notice by advertising according to law shall be provided. The successful bidder of the subject property shall comply with the terms of the sale within twenty (20) days after the sale and if the purchaser should fail to comply with the terms within twenty (20) days, then this court may advertise and resale the premises at the next ensuing Sales Day. Further,

A handwritten signature in black ink, appearing to be initials or a stylized name, located in the bottom right corner of the page.

IT IS ORDERED that this court will apply the proceeds from the sale as follows:

First to the payment of the amount of the costs and expenses of this action, to include the attorney's fees and costs approved herein; Next to the payment of the Note; Next any surplus being held pending further Order of this court.

IT IS SO ORDERED.



GORDON G. COOPER
MASTER-IN-EQUITY
SPARTANBURG COUNTY

Date: January 14, 2010

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CLERK OF COURT
2010 JAN 14 AM 9:50
MARC KITCHENS

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