

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Fields Investments, LLC,)
)
 Plaintiff,)
)
 v.)
)
 Rhondalyn Y.K. Kunishige a/k/a)
 Rondalyn K.Y. Kunishige; and Hinson)
 Management/Country Club Springs HOA,)
 Inc.,)
)
 Defendants)
)

IN THE COURT OF COMMON PLEAS

**ORDER AND JUDGMENT OF
 FORECLOSURE AND SALE
 (Deficiency Demanded Against Defendant
 Rhondalyn Y.K. Kunishige a/k/a Rondalyn
 K.Y. Kunishige)**

C.A. No.: 2009-CP-42-0603

2009 OCT 19 AM 9:51
 MARC MITCHEMS

TO:

Kristin Burnett Barber (#70420)
 Johnson, Smith, Hibband Wildman
 Law Firm, L.L.P.
 Post Office Drawer 5587
 Spartanburg, South Carolina 29304

Ms. Rhondalyn Y.K. Kunishige
 705 Quartermaster Rd., Apt 3362
 Fort Richardson, AK 99505

Ms. Jeanneane Foreman,
 Registered Agent for Hinson
 Management/Country Club Springs HOA, Inc.
 P.O. Box 160207
 Boiling Springs, SC 29316

John R. Holland, Esq.
 Albert V. Smith, PA
 P.O. Box 5866
 Spartanburg, SC 29304

Pursuant to Rule 53 SCRCF, 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 Monday, October 19, 2009, attended by *SHANE W. ROGERS* by ~~Kristin Burnett Barber~~, attorney for Plaintiff Fields Investments, LLC and John R. Holland,

Guardian ad litem for Defendant Rhondalyn Y.K. Kunishige a/k/a Rondalyn K.Y. Kunishige (“Kunishige”), and from the testimony, other evidence and stipulations, I report, find, conclude and order as follows:

FINDINGS OF FACT

1. The Amended Lis Pendens was filed March 26, 2009.
2. The Amended Summons and Amended Complaint were filed on March 26, 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.
4. The Defendants, either personally or by and through their attorney(s) 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, Kunishige made, executed and delivered to the Plaintiff a written promissory note dated March 22, 2006 (hereinafter the "Note"). Pursuant to the terms of the Note, Kunishige promised to pay to the Plaintiff the principal sum of Sixty-Nine Thousand Nine Hundred and 00/100ths (\$69,900.00) Dollars, together with interest thereon at the annual rate of eight and one-half (8.50%) percent on the unpaid balance; payable in twenty-four (24) consecutive monthly principal and interest payments based on a thirty (30) year amortization in the amount of Five Hundred Thirty-Seven and 47/100ths (\$537.47) Dollars, beginning May 1, 2006 and continuing each successive month thereafter on the same date, with the twenty-fourth payment being a balloon payment of all outstanding principal and interest in the amount of Sixty-Nine Thousand Three Hundred Thirty-Three and 86/100th (\$69,333.86) Dollars. A copy of the Note is attached to the Complaint as Exhibit "B" and incorporated herein by reference.

7. To induce the Plaintiff to make the loan and to secure payment of the principal and interest on the Note, Kunishige executed and delivered to the Plaintiff a Mortgage of Real

Estate dated March 22, 2006 and recorded March 23, 2006 in Mortgage Book 3631 at page 025 in the Office of the Clerk of Court for Spartanburg County, South Carolina, encumbering certain real property generally described as Lot 14 which contains Unit 14 of Royal Oaks Towne Houses located at 230 Old Towne Road, Unit 14, Spartanburg, South Carolina (hereinafter the "Mortgaged Property") and 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 Complaint as Exhibit "C" and incorporated herein by reference.

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

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

10. That Kunishige is now and has been in default of 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.

13. In and by the terms of the Note and Mortgage, if the payment of taxes and/or insurance is made by the Plaintiff as 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 required notice of 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 contested nature of this foreclosure action, I find the sum of Three Thousand Eight Hundred Sixty-Three and 36/100ths (\$3,863.36) 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 October 19, 2009 on the Note and Mortgage:	\$67,785.42
b.	Interest accrued as of October 19, 2009:	\$ 252.55
c.	Late Charges and fees accrued as of October 19, 2009:	\$ 1,074.80
d.	Guardian Ad Litem's Fees and Costs to John R. Holland, Esq.:	\$ 480.00
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e.	Attorney's Fees, plus costs:	\$ 3,863.36
f.	Total debt secured by the Note and Mortgage including interest to date shown:	\$73,456.13

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.

17. The Plaintiff is seeking foreclosure of the Mortgage and does not waive but specifically demands deficiency judgment against Rhondalyn Y.K. Kunishige a/k/a Rondalyn K.Y. Kunishige.

18. That 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 and Mortgage, as described hereinabove:

a. Defendant Hinson Management/Country Club Springs HOA, Inc. by virtue of that certain instrument obtained against Rondalyn K. Y. Kunishige filed June 29, 2007 in the Office of the Clerk of Court for Spartanburg County in judgment roll number 296727 in the original amount of Three Hundred Thirty-Seven and 79/100ths (337.39) Dollars.

19. 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 Plaintiff has completed an Affidavit which provides that the loan which is the subject of this action is **not** subject to modification under the

Homeowner Affordability and Stability Plan, the Home Affordable Modification Program and the United States Treasury Supplemental Directive 09-01 (hereinafter referred to collectively as "HMP"); that the Plaintiff, is not a servicer who has signed an agreement to participate in the HMP and that this loan is not owned, guaranteed or securitized by Federal National Mortgage Association ("Fannie Mac") or Federal Home Loan Mortgage ("Freddie Mac") (the "HMP Affidavit").

20. Based on the HMP Affidavit, the Plaintiff 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 Plaintiff, as is set forth in my findings, on the obligations of the Note and Mortgage the sum of Seventy-Three Thousand Four Hundred Fifty-Six and 13/100ths (\$73,456.13) Dollars as of the 19th day of October, 2009, together with any amounts the Plaintiff 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 Rhondalyn Y.K. Kunishige a/k/a Rondalyn K.Y. Kunishige. 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 Kunishige, 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 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 Plaintiff's indebtedness;

6. 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;

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 Plaintiff 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:

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 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. 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 Defendant Rhondalyn Y.K. Kunishige a/k/a Rondalyn K.Y. Kunishige.

11. 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;

12. 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

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

14. 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;

15. 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

October _____, 2009

Spartanburg, South Carolina

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2009 OCT 19 AM 9:57
MARC KITCHENS

EXHIBIT "A"
(Legal Description)

All that certain piece, parcel or lot of land, improvements thereon, lying, situate and being in the State of South Carolina, County of Spartanburg, being shown and designated as Lot. 14 which contains Unit 14 of Royal Oaks Towne Houses as shown on a survey prepared for Don Wade by J.T. Keller, Surveyor, dated March 27, 1985 and recorded in Plat Book 93 at Page 612, Register of Deeds Office for Spartanburg County.

This being the same property conveyed to Rhodayln Y. K. Kunishige by deed of Fields Investments, LLC dated March 22, 2006 and recorded March 23, 2006 in Deed Book 85-J at page 469 in the Office of the Register of Deeds for Spartanburg County, South Carolina.

Address: 230 Old Towne Road, Unit 14
Spartanburg, SC 29301
Tax Map No.: 6-24-03-113.00

FILED
CLERK OF COURT
SPARTANBURG COUNTY
SOUTH CAROLINA
2009 OCT 19 AM 9:57
MARC KITCHENS