

STATE OF SOUTH CAROLINA )  
COUNTY OF SPARTANBURG )

COURT OF COMMON PLEAS  
DOCKET NO. 2009-CP-42-3893

Habitat for Humanity of Spartanburg, Inc. )

MASTER'S ORDER

AND

JUDGEMENT

PLAINTIFF(S), )

OF

VS. )

FORECLOSURE

AND

Michael Mathis, Kristy Lydia, and South  
Carolina Housing Trust Fund )

SALE

DEFENDANT(S). )

(Deficiency Waived)

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
2009 OCT 14 PM 3:47  
MARC KITCHENS

Notice: The original of this document was filed in the Office of the Clerk of Court for Spartanburg County, and copies forwarded to the following on the same date to:

Mr. David G. Ingalls, Attorney at Law, as Attorney for the Plaintiff

Pursuant to Rule 53 SCRCP, the above-entitled matter was referred to the undersigned to make appropriate findings of facts and conclusions of law with authority to enter a final judgement in the case. Any appeal from this Order is to the Supreme Court.

Pursuant to the said Order of Reference, a hearing was held, attended by the attorneys of record, the testimony was taken, which is reported herewith, and from the testimony and evidence, I find, conclude, and order as follows:

FINDINGS OF FACT:

1. The Lis Pendens was filed on the 16th day of July, 2009.
2. The Summons and Complaint were filed on the 16th day of July, 2009.
3. Service was made upon the defendants named in this Report as shown by the proofs of service filed herein. The Defendant South Carolina Housing Trust Fund timely filed its' Answer through its' attorney, Jarrunis L. Yates.
4. The Defendants Michael Mathis and Kristy Lydia are in default as shown by the affidavit filed herein.

5. According to the affidavit filed herein, no defendant in default is in the Military Service of the United States of America as contemplated under the Soldiers' & Sailors' Civil Relief Act of 1940, and any amendments thereto.

6. The Defendants were notified of the time, date, and place of the hearing in this matter.

7. For value received, the Defendants, Michael Mathis and Kristy Lydia made, executed and delivered a note dated the 6th day of March, 2003 promising thereby to pay to the order of Habitat for Humanity of Spartanburg, Inc. the sum of Fifty Thousand Six Hundred Sixty-Four and 68/100 (\$50,664.68) Dollars with interest at no interest except upon default: Eighteen (18%) percent per annum. Other terms and conditions are stated in the Note which is of record herein.

8. To better secure the payment of the Note described above, the Defendants Michael Mathis, Kristy Lydia executed and delivered to Habitat for Humanity of Spartanburg, Inc. a mortgage in writing, dated the 6th day of March, 2003 covering real property in Spartanburg County, which is the same as that described in the Complaint. The mortgage was filed on the 7th day of March, 2003 and is of record in the Office of the Register of Deeds of Spartanburg County in Mortgage Book 2898, at Page 179.

9. This mortgage constitutes a first lien on the subject property and is a purchase money mortgage.

10. The titleholders of record in and to the subject property as of the filing of the Lis Pendens in this action are the Defendants Michael Mathis and Kristy Lydia, who are the original mortgagors.

11. Payment due on the note has not been made as provided for therein, and the Plaintiff, as the holder thereof, has elected to accelerate payment of the entire indebtedness and has placed the note and mortgage in the hands of the attorney herein for collection.

12. The sum of \$5,000.00 is a reasonable fee to allow as attorney fees for plaintiff's attorney for services performed and anticipated to be performed until final adjudication of the within action, under the terms of the Note and mortgage. Services anticipated to be performed until final adjudication contemplates completion of this matter within a reasonable time and does

not include exceptional circumstances delaying conclusion beyond the normal time.

13. The amount due and owing on the note, with interest at the rate provided in the Note, and all other costs and expenses of collection, including an attorney's fee, secured by the note and mortgage, is as follows:

(a)	Principal balance due as of 10/08/08	\$37,786.60
(b)	Interest through 10/14/09	6,913.39
(c)	Escrow Deficit	232.96
(d)	Late Charges	290.00
(e)	Costs of collection prior to hearing	510.00
(f)	Attorney's fee	5,000.00

TOTAL DEBT secured by note and mortgage, including interest to date shown	<u>\$50,732.95</u>
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Interest for the period from the date shown in (b) above through the date of this Judgment at the above stated rate to be added to the above stated "Total Debt" to comprise the amount of the judgment debt entered herein, and interest after the date of judgement at the rate of Eighteen (18%) percent per annum (pursuant to the terms of the note and mortgage) on the judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the mortgage through the date to which such interest is computed.

14. The Plaintiff is seeking foreclosure of the mortgage and has in the Complaint, or subsequently thereto in writing, expressly waived the right to a personal or deficiency judgment pursuant to Rule 71(b) SCRCF.

15. The validity, priority and amount of any lien or claim of the Defendants will be determined at a hearing subsequent to the sale in the event there are surplus funds after payment of the Plaintiff's debt, in accordance with Rule 71(c) SCRCF.

17. This action involves residential property and the loan not owned, securitized, or guaranteed by Fannie Mae or Freddie Mac. Further, that this Plaintiff is not participating in the Home Affordable Modification Program (HMP).

#### CONCLUSIONS OF LAW

I, therefore, conclude that the Plaintiff should have judgment of foreclosure of the mortgage and the mortgaged property should be ordered sold at public auction after due advertisement.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. There is due to the Plaintiff on the obligation and mortgage set forth in the Complaint the sum of \$50,732.95, representing the total debt due Plaintiff as set out in paragraph thirteen (13) supra., together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof. Any sums advanced by the Plaintiff for real estate taxes on the subject property subsequent to the date of the hearing in this action shall be added to the judgment debt without further hearing.

2. The amount due in the preceding paragraph (the "total debt" as set forth in paragraph thirteen (13) supra., and later accrued interest on the principal) shall constitute the total judgment debt due the Plaintiff and shall bear interest hereafter at the rate of no interest except upon default: Eighteen (18%) percent per annum.

3. That the Defendant liable for the aforesaid mortgage debt shall on or before the date of sale of the property hereinafter described, pay to the Plaintiff, or the Plaintiff's attorney, the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

4. That on default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, as hereinafter set forth, be sold by the undersigned Master-in-Equity, at public auction, at the Spartanburg County Courthouse, in the City of Spartanburg County and State aforesaid, on some convenient sales day hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event, the sales day shall be on the Tuesday next succeeding such holiday), on the following terms, that is to say:

A. FOR CASH: The Master-in-Equity, will require a deposit of 5% on the amount of the bid (in cash or equivalent), same to be applied on the purchase price only upon compliance with the bid, but in case of noncompliance within thirty (30) days same to be forfeited and applied to the costs and Plaintiff's debt.

B. Interest on the bid shall be paid from the date of sale to the date of compliance at the rate of Eighteen (18%) percent per annum.

C. The sale shall be subject to taxes and assessments, to existing easements and restrictions, and to any other senior encumbrances.

D. Purchaser to pay for deed stamps and cost of recording the deed.

5. If Plaintiff is the successful bidder at said sale, for a sum not exceeding the amount of costs, disbursements, expenses and the indebtedness of Plaintiff in full, Plaintiff may pay to the undersigned Master-in-Equity only the amount of the costs, disbursements and expenses, crediting the balance of the bid on Plaintiff's indebtedness.

6. Personal or deficiency judgment being waived, the bidding will not remain open after the date of sale, but compliance with the bid may be made immediately.

7. That the Master-in-Equity, will by advertisement according to law, give notice of the time, and place of sale, and the terms thereof; and will execute to the Purchaser, or Purchasers, a deed to the premises sold. The 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 thirty (30) days after date of 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 former highest bidder, and so from time to time thereafter until a full compliance shall be secured.

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

FIRST: To payment of the amount of the costs and expenses of this action, including any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court;

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

NEXT: Any surplus will be held pending the further Order of this Court.

9. It is further ORDERED, ADJUDGED AND DECREED that in the event the successful bidder is other than the Defendant in possession herein, the Sheriff of Spartanburg County is ordered and directed to eject and remove from the premises the occupants of the property sold, together with all personal property located thereon, and put the successful bidder or his assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.

10. And it is further ORDERED, ADJUDGED AND DECREED that each Defendant named herein and all persons whosoever claiming under him, them or it, be forever barred and foreclosed of all right, title and interest and equity of redemption in the said mortgaged premises

so sold, or any part thereof.

11. IT IS FURTHER ORDERED that, pursuant to S. C. CODE Ann. Section 30-9-31 (Supp. 1987), the deed on conveyance made pursuant to this sale shall be indexed in the grantor index by the Register of Mesne Conveyances in the name of the owner of record of subject property immediately prior to execution of the deed, as well as in the name of the Master-in-Equity who executes such deed as grantor.

12. IT IS FURTHER ORDERED that if the Plaintiff or the Plaintiff's representative does not appear at the scheduled sale of the above-described property, then the sale of the property will be null, void and of no force and effect. In such event, the sale will be rescheduled for the next available sales day.

13. The 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.

14. The following is a description of the premises herein ordered to be sold:

ALL that certain piece, parcel, or lot of land near Saxon, in the County of Spartanburg, State of South Carolina, being shown and designated as Lot No. 27, containing 0.208 acre, more or less, on a plat of survey of The Sycamores, Phase 4, by Neil R. Phillips & Company, Inc., dated April 4, 2001, latest revision August 14, 2001, and recorded in Plat Book 150, Page 996, Register of Deeds Office for Spartanburg County, South Carolina. Reference is hereby made to said plat of survey in aid of description.


This property is subject to Restrictive Covenants (The Sycamores) dated May 22, 2001 and recorded July 31, 2001 in Deed Book 74-F, at Page 633, said Register of Deeds.

This being the same property conveyed to Michael Mathis and Kristy Lydia by deed of Habitat for Humanity of Spartanburg, Inc., dated March 6, 2003 and recorded March 7, 2003 in Deed Book 77-L, at Page 884, ROD for Spartanburg County, South Carolina.

Current Address: 408 Cottonwood Drive, Spartanburg, SC 29301

Block Map Reference No.: 6-13-14-152.00

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
2009 OCT 14 PM 3:47  
MARC KITCHENS

  
Gordon G. Cooper as Master-in-Equity for Spartanburg County

Date: 10/14/09  
Spartanburg, South Carolina