

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)
)
First Citizens Bank and Trust)
Company, Inc.,)
)
Plaintiff,)
)
vs.)
)
Christopher Van Sluys aka)
Christopher B. Van Sluys,)
Defendant.)
)

IN THE COURT OF COMMON PLEAS

C.A. No.: 2011-CP-42-4124

ORDER OF FORECLOSURE

Pursuant to Rule 53, SCRPC, 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 judgment. Any appeal from this Order is to the Supreme Court.

Pursuant to the said Order of Reference, a hearing was held on December 14, 2011, attended by the Plaintiff's attorney Beth Manning Lee. 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 Summons, Complaint were filed on September 27, 2011 and the Lis Pendens was filed on September 15, 2011.
2. Service was made upon the Defendant named in this Order as shown by the proof of service filed herein.
3. Defendant Christopher Van Sluys aka Christopher B. Van Sluys (hereinafter referred to as Defendant "Van Sluys") is in default as shown by the Affidavit and Order of Default and Reference filed November 7, 2011

4. This court finds that the loan subject to foreclosure is not owned, securitized or guaranteed by the Federal National Mortgage Association, a/k/a Fannie Mae or the Federal Home Loan Mortgage Corporation, a/k/a Freddie Mac, and Plaintiff is not a participating servicer in the Home Affordable Mortgage Program (“HMP”). This Court therefore finds that the Note and Mortgage are not subject to modification under HMP, and therefore are not subject to the administrative order issued by Chief Justice Jean Toal of the South Carolina Supreme Court on May 22, 2009, in the matter identified as *RE: Mortgage Foreclosures and the Home Affordable Mortgage Program (HMP)*.

5. I further find that that the subject property is not the principal residence of any mortgagor in this matter, and therefore are not “Owner-Occupied dwelling(s)” as defined in the administrative order issued by Chief Justice Jean Toal of the South Carolina Supreme Court on May 2, 2011, in the matter identified as *RE: Mortgage Foreclosure Actions*, and are therefore exempt from the rights or requirements of said order. Plaintiff’s Certification of Non-Compliance from Administrative Order was filed December 8, 2011.

6. I find all Notice Requirements to be met.

7. Defendant Van Sluys executed and delivered a Promissory Note to First Citizens Bank and Trust Company, Inc., dated September 3, 2008, containing a promise to pay the Plaintiff the principal sum of Fifty-Eight Thousand Four Hundred Twenty-Nine and 10/100ths (\$58,429.10) Dollars, together with interest thereon upon such terms as are contained in said Note, a copy of which is of record.

8. In addition, as security for the above-referenced Promissory Note and all extensions, renewals, modifications or substitutions thereof, Defendant Van Sluys

previously executed and delivered to the Plaintiff a Real Estate Mortgage, whereby there was previously conveyed unto the Plaintiff property located in Spartanburg County, South Carolina, which said Real Estate Mortgage was recorded in the Office of the Register of Deeds for Spartanburg County in Mortgage Book 2998 starting at Page 178, on July 1, 2003. A copy of the aforementioned Real Estate Mortgage is also of record.

9. The titleholder of record in and to the portion of subject property secured by said Mortgage of Real Estate is Defendant Van Sluys, who is the original mortgagor.

10. Under the terms of the Promissory Note and Mortgage of Real Estate securing same, if at any time any portion of principal or interest shall be past due and unpaid, or if any of the conditions and requirements in said documents not be complied with, then the whole principal sum and accrued interest shall, at the option of the legal holder thereof, become immediately due and payable and collectable by foreclosure. Defendant Van Sluys has defaulted on the above-described Promissory Note and Mortgage of Real Estate, there having been no payment made since the loan(s) since April 15, 2011, and under the terms of the subject Promissory Note and Mortgage of Real Estate, Plaintiff has declared the entire outstanding indebtedness to be immediately due and payable. Although demand for payment and/or "Notice of Right to Cure" has been made or given in accordance with said loan documents and the Code of Laws of South Carolina, 1976, as amended, the subject mortgage loan account remains in arrears.

11. The Promissory Note and Mortgage of Real Estate, provide for the collection of all attorney fees incurred by Plaintiff, in an amount not less than fifteen percent (15%) of the amount owing on the Note, besides all costs and expenses incident upon such collection, in the event of default. The Court finds it appropriate to award the

Plaintiff attorney fees and costs in the sum of \$2,584.80 for services performed and anticipated to be performed until final adjudication of the within action, under the terms of the Promissory Note and Mortgage of Real Estate. 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.

12. The amount due and owing on the Promissory Note and Mortgage of Real Estate, with interest at the rate provided in said loan documents, together with finance fees and late fees applicable under the terms of said loan documents, and all other costs and expenses of collection, including an attorney's fee, secured by said Promissory Note and Mortgage of Real Estate, is as follows:

(a) Principal balance due as of December 14, 2011:	\$58,114.70
(b) Interest from April 15, 2011, at 6.715% per annum:	\$ 2,799.48
(d) Late Fees:	\$104.65
(e) Attorney's fee and costs:	<u>\$2,584.80</u>

TOTAL DEBT secured by Promissory Note and Mortgage of Real Estate including interest to date shown: \$63,603.61

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 judgment at the per diem rate of \$10.73 through the date of compliance with the bid 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.

13. The Plaintiff is seeking, and I find it appropriate to grant, foreclosure of the Mortgage of Real Estate, as well as a deficiency judgment against Defendant

Christopher Van Sluys aka Christopher B. Van Sluys for the Promissory Note pursuant to S.C. Code Ann. §29-3-660 (1976).

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 \$63,603.61, representing the total debt due Plaintiff as set out in paragraph twelve (12) supra. together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof.

2. The amount due in the preceding paragraph (the “total debt” as set forth in paragraph twelve (12) 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 6.715% per annum.

3. That the Defendant is liable for the aforesaid mortgage debt and 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 Clerk of Court for Spartanburg County, at public auction at the Spartanburg County Courthouse, in the City of Spartanburg, County and State aforesaid, on February 6, 2012, or on some convenient sales day thereafter (and should the regular day of judicial sales

fall on a legal holiday, then and in such event, the sales day shall be on 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) at time of the bid, same to be applied on the purchase price only upon compliance with the bid, but in case of noncompliance within twenty (20) days, same to be forfeited and applied to the costs and Plaintiff's debt.

B. Bidder shall be responsible for Interest on the bid amount at the rate of 6.715% from the date of sale through the date of compliance with the bid.

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 costs of recording the deed.

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

6. A personal or deficiency judgment having been demanded, the bidding will remain open for thirty (30) days after the date of sale in Spartanburg County, with the sale to be final upon that date.

7. That the Clerk of Court for Spartanburg County, 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 or deed(s) 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 twenty (20) days after date of sale, then the Clerk of Court may advertise the said premises for sale on the next available 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 of 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 on the same.

NEXT: Any surplus will be held pursuant to Rule 71 (c) SCRPC 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, ADJUDGED AND DECREED that pursuant to S.C. Code Ann. §30-9-31 (1991), the deed(s) 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 subject property immediately prior to execution of the deed, as well as in the name of the Clerk of Court for Spartanburg County, who executes such deed as grantor.

12. 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 without further notice to the mortgagor(s) and disposing of any surplus funds pursuant to Rule 71(c) SCRPC.

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

ALL that piece, parcel, or lot of land, situate, lying in Spartanburg County, State of South Carolina, with all improvements thereon, being known and designated as Lot Number Twenty (20), Block B, Tanglewood Subdivision, being more fully described on plat of Tanglewood Subdivision, dated September 23, 1953, and recorded in the Register of Deeds Office for Spartanburg County, in Plat Slide/Book 47, at Page 480. Reference is hereby made to said plat for a more complete description of metes and bounds thereof.

This conveyance is made subject to any and all restrictions, easements, covenants, conditions, rights of way, zoning rules and laws and regulations, any of which may be found of record in the Register of Deeds Office for Spartanburg County, South Carolina.

This being the identical property conveyed to Mortgagor and Connie Van Sluys by Deed from Manufacturers & Traders Trust Company, Trustee for Securitization Series 1998-2, Agreement dated 06-01-98, dated 02/10/02, recorded 02/17/03, and duly recorded in the Office of the Register of Deeds for Spartanburg County in Book 77-H, at Page 845. See also deed from Connie Van Sluys to Christopher Van Sluys dated June 5, 2003 and recorded on July 1, 2003 in Deed Book 78E at Page 261 in the Register of Deeds Office.

TMS # 4-25-11-100.00

Address: 10 Chestnut Street in Woodruff, SC 29388

AND IT IS SO ORDERED.

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

Spartanburg, South Carolina
Date: _____