

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2008-CP-42-5331

Lakeland Construction Finance, LLC.)
)
)
Plaintiff,)
v.)
)
The Estates of Lake Blalock, LLC and)
Emily Easler-Handy, Individually,)
)
Defendants.)

**ORDER AND JUDGMENT
OF FORECLOSURE AND SALE
(Deficiency Requested)**

2009 OCT -6 AM 11:00
MARA'S KITCHENS

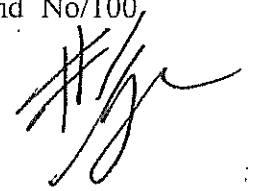
FILED
CLERK OF COURT
SPARTANBURG, SC

This matter comes before me as Master-in-Equity for Spartanburg County, South Carolina pursuant to that certain Order of Reference in this case filed on March 30, 2009; said Order of Reference providing *inter alia* that any order or judgment issued by the undersigned shall be final and any appeal therefrom be to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

Pursuant to the said order of reference, a hearing was held in this matter on September 22, 2009 at which time testimony was taken, which is reported herewith.

Present at the hearing was the Plaintiff represented by James P. Craig, Esq. and appearing for the Plaintiff was Cameron Fant, Loan Officer and head of the Plaintiff's operations in the State of South Carolina. The Defendants appeared represented by Kenneth C. Anthony, Esq and appearing for the Defendant, The Estates at Lake Blalock, LLC was Emily Easler-Handy, appearing for herself, individually and as sole owner of the Defendant, the Estates of Lake Blalock, LLC. The Defendants had filed an answer and counterclaim in this matter but prior to the taking of any testimony, the parties, by and through their respective counsel, announced to the Court that an agreement had been reached wherein the Defendants would dismiss their answer and counterclaim and allow the matter to go forward on an uncontested basis.

The terms of the agreement reached between the parties as set forth in the record in this case is as follows. The parties announced that the Plaintiff had previously entered into an agreement with the Defendants to accept the sum of Three Million One Hundred Thousand and No/100,



(\$3,100,000.00) Dollars as full satisfaction of its debt and obligation to the Plaintiff; the total debt of the Defendants to the Plaintiff being in excess of Four Million Five Hundred Thousand and No/100 (\$4,500,000.00) Dollars, as more particularly set forth hereinbelow. The agreement for the Plaintiff to accept the payoff of \$3,100,000.00 expired on June 30, 2009. In exchange for the Plaintiff agreeing to extend its agreement to accept a payoff of \$3,100,000.00 as full satisfaction of the Defendants obligation to the Plaintiff through the date of the final sale of the foreclosure action in this case, the Defendants agreed to dismiss their answer and counterclaim and allow the Plaintiff's foreclosure action to proceed on an uncontested basis. The parties further agreed that if the Plaintiff did not receive \$3,100,000.00 by the date of the final sale of the Mortgaged Premises in this case, that the agreement to accept such amount would end and the Defendants would be subject to a deficiency judgment as may be determined and rendered in the normal course of the foreclosure of the Mortgaged Premises, the Plaintiff seeking a deficiency judgment against both Defendants in this case. For purposes of clarification, the parties agreed that if a third party were to buy the Mortgaged Premises at the foreclosure sale for a sum greater than \$3,100,000.00, the Plaintiff would not seek a deficiency judgment against the Defendant and further, if a third party purchased the Mortgaged Premises for an amount less than \$3,100,000.00 at the foreclosure sale in this case, the Defendant's could pay the difference between the amount of the third party bid and \$3,100,000.00 and avoid any deficiency judgment. In all events, the final date for the Plaintiff's acceptance of a payoff of \$3,100,000.00 is the date of the final sale of the Mortgaged Premises which will be thirty (30) days following the initial foreclosure sale, the Plaintiff having demanded a deficiency judgment in this action.

The Court finds that such agreement is fair and equitable to all parties and adopts such agreement as the order of this Court. Based thereon, the Defendant's answer and counterclaim are dismissed and the matter proceeded on an uncontested basis. Whereupon, the Defendants and their counsel withdrew from the Court. Thereafter, the Plaintiff presented its case on an uncontested bases. From the testimony and the evidence presented at the hearing, I find, conclude and order, as follows:

FINDINGS OF FACT and CONCLUSIONS OF LAW

1. This is a foreclosure action initiated by the filing of a Summons and Complaint by the Plaintiff on October 14, 2008.

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2. The Plaintiff filed a Lis Pendens on October 14, 2008 giving notice of the pendency of this action regarding the property subject to this foreclosure action (the "Mortgaged Premises").

3. Proper service of all Defendants was made as set forth in the Affidavit of Service filed in this case.

4. This Court has proper jurisdiction over the parties, the subject matter and the Mortgaged Premises.

5. The Defendant, The Estates of Lake Blalock, LLC. ("Lake Blalock") and Emily Easler-Handy ("Easler-Handy") filed their answer and counterclaim on November 18, 2008 alleging certain defenses to the Plaintiff's foreclosure action; provided, however, as set forth hereinabove, the Defendants have withdrawn their answer and counterclaim and this matter proceeded on an uncontested basis..

6. All of the parties herein and their attorneys of record were notified of the time, date and place of the hearing in this matter as set forth in the Certificate of Mailing filed in this case.

7. According to the Affidavit filed herein, the Defendant, Easler-Handy is not in the military service of the United States of America, as contemplated under the Servicemembers Civil Relief Act (2003) and any amendments thereto.

9. According to the affidavit filed herein, the mortgage sought to be foreclosed upon by the Plaintiff is not subject to being stayed by virtue of being a protected class pursuant to the order of the South Carolina Supreme Court.

10. The Plaintiff introduced as Plaintiff's Exhibits the following documents


(a) Real Estate Construction Note from the Estates of Lake Blalock, LLC. dated October 23, 2006 in the amount of \$4,000,000.00 (herein the "Note").

(b) Mortgage Security Agreement and Fixture Financing Statement dated October 23, 2005 and recorded October 25 2006 in the Office of the Spartanburg County County Register of Deeds in Book 3771 at Page 632 (herein the "Mortgage").

(c) Construction Loan Agreement dated October 23, 2006;

(d) Guaranty of Emily Easler-Handy of the Real Estate Construction Note described in paragraph 10(a) herein. (herein the "Guaranty")

11. The Plaintiff introduced the testimony of Cameron Fant, Loan Officer of the Plaintiff, Lakeland Construction Finance, LLC who offered testimony confirming the agreement

#3


of the parties set forth herein and the validity of the above described exhibits introduced into evidence.

12. Based upon the testimony presented at the hearing, the exhibits introduced into evidence and the agreement of the parties, I find and conclude as follows:

(a) For value received, Lake Blalock made executed and delivered that certain Real Estate Construction Note dated October 23, 2009 promising thereby to pay to the order of Lakeland Construction Finance, LLC the sum of \$4,000,000.00 or so much thereof as may be advanced by the Plaintiff to the Defendants, with interest thereon as provided by the terms of the said note.

(b) To better secure the payment of the Note, Lake Blalock made executed and delivered to Lakeland Construction Finance, LLC. a Mortgage, Security Agreement and Fixture Financing Statement dated October 23, 2006 covering the Mortgaged Premises; said Mortgage having been properly filed of record in the Office of the Register of Deeds for Spartanburg County, on October 25, 2006 in Book 3771 at Page 632.

(c) The Mortgage constitutes a first lien on the Mortgaged Premises and is a purchase money mortgage.

(d) The record title holder of the Mortgaged Premises as of the filing of the Lis Pendens in this action is the Defendant, Lake Blalock

(e) The payment(s) due on the Note have not been made as provided for therein and the Plaintiff has elected to require immediate payment of the entire amount due thereon; has demanded payment from the Defendant, Lake Blalock and the guarantor being the individual Defendant, Easeler-Handy; has given both Defendants ample time to make such payments and such payments having not been made; whereupon, the Plaintiff has placed the Note and Mortgage in the hands of an attorney for collection.

(f) The amount due and owing on the Note, with interest thereon at the rate and upon the terms as provided in the Note, together with other costs and expenses of collection, including reasonable attorney's fees as provided herein, such amount being secured by the aforesaid mortgage, is as follows.

TOTAL DEBT secured by Note and Mortgage
including interest to date shown

\$4,678,865.81

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Per Diem after 9-29-09

\$1,320.97

(g) The Plaintiff has demanded a deficiency judgment in this action and in the event that the sale of the Mortgaged Premises does not yield a sum sufficient to satisfy the Total Debt as stipulated herein, the Plaintiff is entitled to a deficiency judgment against the Defendant.

NOW, THEREFORE, IT IS HEREBY ORDERED

1. There is due to the Plaintiff on the obligation of the Note and Mortgage set forth in this action the sum of Four Million Six Hundred Seventy Eight Thousand Eight Hundred Sixty Five and 81/100 (\$4,678,865.81) Dollars representing the Total Debt due Plaintiff as set forth in the Findings of Fact; and,

2. The amount due in the preceding paragraph constituting the Total Debt shall constitute the Total Judgment Debt due the Plaintiff from the Defendants, subject to such offset and reduction as may be appropriate after application of the proceeds of sale of the Mortgaged Premises.

3. The Defendants shall be liable for payment to the Plaintiff of the amount of the Total Debt set forth above on or before the date of the sale of the Mortgaged Premises and to pay to the Plaintiff the amount of Plaintiff's debt as aforesaid; and if such amount of Total Debt of the sum of \$3,100,000.00 is paid in full by the Defendants to the Plaintiff prior to the date of the foreclosure sale, this debt shall be canceled; and,

4. On default or failure of payment of the Total Debt or the sum of \$3,100,000.00 by the Defendant to the Plaintiff prior to the date of the foreclosure sale, the Mortgaged Premises, shall be sold by the Master-in-Equity for Spartanburg County, South Carolina or his agent under the direction of the Master-in-Equity, at public auction at the Spartanburg County Courthouse, Spartanburg, South Carolina on a sales date to be set by the said Master-in-Equity.

A. FOR CASH: the Master in Equity will require a deposit of 5% on the amount of the bid in cash or cashier's check and the same to be applied to the purchase price only upon compliance with the bid by the successful bidder, but in the case of non-compliance within 20 days, the deposit shall be forfeited without further hearing and applied first to the costs of this action and thereafter to the Total Debt. The deposit will be received in Room

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102 of the Spartanburg County Courthouse either (1) upon the conclusion of the sales process or (2) between 2:00 and 4:00 during the afternoon of sales day; and,

B. The sale shall be subject to taxes and assessments, existing easements and easements and restrictions of record, if any; and,

C. The mortgage constitutes a first priority lien on the Mortgaged Premises and is a purchase money mortgage.

D. Purchaser of the Mortgaged Premises at auction shall be responsible for payment of the preparation of the deed and the cost for recording the deed and all applicable transfer taxes.

E. The Plaintiff having demanded a deficiency judgment, the sale will remain open for thirty (30) days. Upset bids will be received at 11:00 a.m. on the thirtieth (30th) day following sales day. Anyone may participate in the bidding on that day, except (1) the Plaintiff and (2) anyone who out-bids the Plaintiff on sales day.

5. In the event that the Plaintiff is the successful bidder at the foreclosure sale for a sum not exceeding the amount of the Total Debt, the Plaintiff may pay to the Master-in-Equity only the amount of the cost of disbursements and expenses of the Master-in-Equity and crediting the balance of the bid to the Total Debt.

6. The undersigned Master-in-Equity will, by advertisement according to law, give notice of the time, date and place of sale and the terms thereof, which Notice of Sale, is incorporated herein by reference and will execute to the Purchaser(s) a deed to the Mortgaged Premises sold at the foreclosure sale. The Plaintiff or any other party to this action may be a purchaser at the foreclosure sale; and if upon such foreclosure sale being made, the successful bidder at the foreclosure sale fail to comply with the terms thereof within twenty (20) days after the date of sale, then the undersigned Master-in-Equity may advertise the Mortgaged Premises for sale on the next or some other subsequent sales date and continue so from time to time thereafter until the full compliance shall be secured; and,

7. The Plaintiff having demanded a deficiency judgment, the bidding shall remain open for thirty (30) days following the sales date; and,

8. In the event that the Plaintiff or Plaintiff's agent fail to appear on the date of sale, the Mortgaged Premises shall not be sold and in the event any such sale shall be withdrawn for failure of

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appearance of the Plaintiff or Plaintiff's agent, the foreclosure sale shall be considered null and void and the Mortgaged Premises shall be re-advertised and sold at some convenient sales date thereafter when Plaintiff or Plaintiff's agent is present; and,

9. The Master-in-Equity will apply the proceeds of sale as follows:

A. First, to the payment of the amount of costs and expenses of this action, including any costs and expenses to the Master-in-Equity; and,

B. Next, to the Total Debt; and,

C. Next, any surplus funds remaining thereafter shall be held by the Court pending further order of the Court.

10. In the even 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.

11. In addition to all parties deemed by law to have received constructive notices of the action herein, the Defendant named herein and all other persons whomsoever claiming under said Defendant be forever barred and foreclosed of all right, title, interest and equity of redemption in the said mortgaged premises so sold or any part thereof.

12. The Deed of conveyance made pursuant to said sale shall contain the names of only the first named Plaintiff and the first named Defendant and the Defendant who was the titleholder of the Mortgaged Premises at the time of filing of the notice of pendency of the within action, and the name of the grantee and the Register of Deeds is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

13. The Master-in-Equity will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, issuing a Writ of Assistance and hearing any issues involving appraisal proceeding under Section 293-680 et. seq., South Carolina Code of Laws (1976) as amended.

14. Plaintiff does not warrant the title to the Mortgaged Premises to any purchaser at foreclosure sale or other third parties, who should have their own title search performed on the subject property.

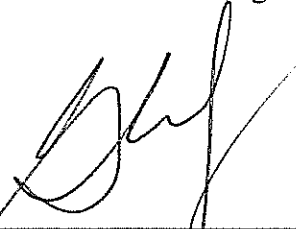
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15. The following is a description of the premises herein ordered to be sold:

All that certain piece, parcel or tract of land situate, lying and being in the State of South Carolina, County of Spartanburg located at Lake Blalock near Buck Creek Baptist Church and being shown and designated as 96.97 acres, more or less, upon a plat prepared for Emily Easler-Hand by Huskey & Huskey, Inc. PLS, dated December 8, 2003 and recorded in Plat Book 155 at Page 396, Register of Deeds for Spartanburg County, South Carolina.

BEING the same property conveyed to The Estates of Lake Blalock, LLC by deed of Garvin O'Neal Mintz a/k/a Garvin O'Neal Mintz, Jr. and Barbara W. Mintz dated January 7, 2004 and recorded in the Office of the Register of Deeds for Spartanburg County on January 8, 2004 in Book 79-L at Page 841..

TMS#: 2 25-00-006.00



Gordon G. Cooper
Master in Equity for Spartanburg County

Spartanburg, South Carolina
October 6, 2009

2009 OCT -6 AM 11:00
MARC KITCHENS
FILED
REGISTER OF DEEDS
SPARTANBURG COUNTY
SOUTH CAROLINA
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