

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

First National Bank of the South,

Plaintiff,

v.

Southern Management Incorporated
of Spartanburg, Inc., Steven M. Hedden,
Shadowlakes Property Owners Association, Inc.,
Stephanie Ann Bowen Botts, Arthur State Bank,
James Hoppie, and The National Bank of South
Carolina,

Defendants.

)
) IN THE COURT OF COMMON PLEAS
) C/A No. 2009-CP-42-5607
)
)

**JUDGMENT OF
FORECLOSURE AND SALE**
(Deficiency Waived)

2010 FEB 24 AM 11:02

FILED
CLERK OF COURT
SPARTANBURG COUNTY
SOUTH CAROLINA

Pursuant to Rule 53 SCRPC, the above-entitled matter was referred to the Master in Equity by Order of Reference filed on January 25, 2010 to make appropriate findings of fact and conclusions of law with authority to enter a final judgment, and to hear and determine any postjudgment proceedings. Any appeal from this Order is to the South Carolina Supreme Court or to the South Carolina Court of Appeals as provided in the South Carolina Rules of Appellate Procedure.

Pursuant to the Order of Reference, a hearing was held on Wednesday, February 24, 2010. At the hearing, the testimony was taken by way of Affidavit of Debt, which is reported herewith, and from the testimony and other evidence submitted, I find and conclude as follows:

FINDINGS OF FACT

1. The Summons and Complaint were filed on October 14, 2009 in the Office of the Clerk of Court for Spartanburg County, South Carolina.
2. The Lis Pendens was filed on October 14, 2009.

3. The Defendant Southern Management Incorporated of Spartanburg, Inc., (“Borrower”) was served with the Lis Pendens, Summons, and Complaint of First National Bank of the South (“Plaintiff” or “FNBS”) on November 4, 2009, as evidenced by the Affidavit of Service filed on November 13, 2009.

4. The Defendant Steven M. Hedden (“Hedden”) was served with the Lis Pendens, Summons, and Complaint on November 4, 2009, as evidenced by the Affidavit of Service filed on November 13, 2009.

5. The Defendant Shadowlakes Property Owners Association, Inc. was served with the Lis Pendens, Summons, and Complaint on November 3, 2009, as evidenced by the Affidavit of Service filed on November 13, 2009.

6. The Defendant Stephanie Ann Bowen Botts was served with the Lis Pendens, Summons and Complaint on November 12, 2009, as evidenced by the Affidavit of Service filed on December 7, 2009.

7. The Defendant Arthur State Bank was served with the Lis Pendens, Summons and Complaint on October 27, 2009, as evidenced by the Affidavit of Service filed on November 5, 2009.

8. The Defendant James Hopple was served with the Lis Pendens, Summons and Complaint on October 29, 2009, as evidenced by the Affidavit of Service filed on November 5, 2009.

9. The Defendant The National Bank of South Carolina accepted service of the Lis Pendens, Summons and Complaint of First National Bank of the South on October 28, 2009, as evidenced by the Acceptance of Service filed on October 30, 2009.

10. The Defendant Stephanie Botts filed a timely answer on January 25, 2010.

11. The Defendant Arthur State Bank filed a timely answer on or about November 18, 2009.

12. The Defendant James Hopple filed a timely answer on January 25, 2010.

13. The Defendant The National Bank of South Carolina filed a timely answer on or about October 28, 2009.

14. The Defendants Southern Management Incorporated of Spartanburg, Inc., Steven M. Hedden and Shadowlakes Property Owners Association, Inc. have served no Answer to the Complaint filed in this action and are therefore in default, as evidenced by the Affidavit of Default and of Non-Military Service filed on January 25, 2010.

15. All Defendants were provided with notice of the time, place and date of the hearing as shown by a Notice of Hearing and Certificate of Service filed on February 5, 2010.

16. On November 14, 2007, the Borrower made, executed and delivered to FNBS a Promissory Note (the "Note") in the original principal amount of Seven Hundred Thirty Seven Thousand Five Hundred and 00/100 Dollars (\$737,500.00) together with interest at a fixed rate of 7.50% per annum. A true and correct copy of the Note is of record herein.

17. On November 14, 2007, in order to secure the indebtedness represented by the Note, and to secure other obligations as set forth therein, Borrower executed and delivered to FNBS a Mortgage (the "Mortgage") encumbering real property located in Spartanburg County, South Carolina (the "Premises") which is more fully described below.

18. The Mortgage was recorded on November 15, 2007 at 3:49 p.m. in the Office of the Register of Deeds for Spartanburg County in Mortgage Book 3997 at Page 765. A true and correct copy of the Mortgage is of record herein.

19. The Mortgage constitutes a first lien on the Premises.

20. As additional security for the Note, Borrower executed and delivered to FNBS an Assignment of Leases and Rents (the "Assignment of Leases") dated November 14, 2007 and

recorded on November 15, 2007 in the Office of the Register of Deeds for Spartanburg County in Book 2178 at Page 27. A true and correct copy of the Assignment is of record herein.

21. The Plaintiff is the owner and holder of the Note, the Mortgage and the Assignment of Leases.

22. On May 16, 2008, Borrower and FNBS executed a Commercial Debt Modification Agreement (the "Modification") amending the interest rate of the Note. A true and correct copy of the Modification is of record herein.

23. The Borrower later renewed the Note by executing a Note payable to order of FNBS dated November 20, 2008 (the "Renewal Note") which extended the maturity date of the Note to November 20, 2013. The Renewal Note changed the interest rate to a variable rate equal to the sum of the Prime Rate as published in the Wall Street Journal plus one percent, with a floor of five percent (5.0%) and a ceiling of eight percent (8.0%). Further references to the "Note" shall mean the Note as amended by the Renewal Note. A true and correct copy of the Renewal Note is of record herein.

24. The Borrower is in default under the terms of the Note and the Mortgage by reason of its failure to pay the installments due under the Note.

25. Lender provided notice of default and acceleration by letter dated August 26, 2009.

26. Lender provided Borrower with all notices required under the Note, the Mortgage and applicable law.

27. As a result of the default set forth above, Lender has accelerated the Note and demanded payment in full and placed the Note and the Mortgage in the hands of its attorneys for collection by foreclosure.

28. The Note and the Mortgage provide that the holder shall be entitled to recover reasonable

attorney's fees and costs in the event the Note and the Mortgage are referred to an attorney for collection. The sum of \$6,000.00 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.

29. The amount due and owing on the Note, with interest at the rate provided therein, and other costs and expenses of collection, including an attorneys' fee, secured by the Mortgage and all applicable credits is as follows:

(a) Principal	\$ 732,434.36
(b) Interest as of February 24, 2010 (calculated at 5.0%; per diem rate of \$101.77)	\$ 31,444.04
(c) Appraisal	\$ 500.00
(d) Late Charges	\$ 734.43
(e) Attorneys Fees	\$ 6,000.00
(f) Costs of collection prior to Hearing (filing, reference)	\$ 637.00
Total Debt secured by Note and Mortgage, including interest to date shown	\$ 771,749.83

Interest for the period from the date shown in (j) above through the date of this judgment at above stated rate to be added to the above stated "Total Debt" to comprise the amount of the judgment debt entered herein, and interest on the Total Debt after the date of judgment at the

statutory post rate 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.

30. The Plaintiff is entitled to a judgment of foreclosure and sale of the Premises.

31. The following Defendants may claim an interest in the subject property, which interest is junior to the Mortgage held by Plaintiff; in the event there is a surplus from the sale of the subject property, the validity, priority, and amount of any such lien or interest will be determined at a hearing subsequent to the sale, in accordance with Rule 71(c) SCRPC. The said Defendant(s) and such claims or liens are as follows:

- a) Steven M. Hedden, by virtue of a Contract for Deed relating to the Premises dated August 1, 2008 and recorded April 3, 2009 in the Office of the Register of Deeds for Spartanburg County, South Carolina in Deed Book 93-N at Page 807.
- b) Shadowlakes Property Owners Association, Inc., by virtue of its lien or potential lien for assessments on the Premises pursuant to the Declarations for Shadowlakes Subdivision recorded August 24, 1982 in the Office of the Register of Deeds for Spartanburg County in Deed Book 49A at Page 604 (the "Declarations"). According to documentation provided by the Association to Plaintiff's counsel, the Premises are subject to current unpaid assessments consisting of assessments for regime fees through September 2009 in the amount of \$2,140.00 which continue to accrue at \$214.00 per month, and an additional \$6,700.00 special assessment for the Shadowlakes road paving project due on April 30, 2009, together with any claim for attorneys fees and costs recoverable in connection with the assessment liens. As provided in the Declarations, the lien of any assessments is subordinate to the lien of the Plaintiff's Mortgage placed upon the property, and the foreclosure sale of the

CONCLUSIONS OF LAW

I, therefore, conclude as follows:

The Plaintiff should have judgment of foreclosure of the Note and Mortgage, and the mortgaged Premises 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 Note and Mortgage described herein the sum of **\$771,749.83**, representing the Total Debt set out in paragraph 29 supra, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date of this Order.

2. The amount due in the preceding paragraph (the "Total Debt", and later accrued interest on the principal) shall constitute the total judgment debt due the Plaintiff and shall bear interest hereafter at the legal postjudgment rate of 7.25% per annum.

3. That the Defendants liable for the aforesaid mortgage debt shall on or before the date of sale of the property hereinafter described, pay to the Plaintiff or to its attorney, the amount of Plaintiff's Total 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 shall be sold by the Master in Equity at public auction, at the Spartanburg County Courthouse, in the City of Spartanburg, County and State aforesaid, on Monday, April 5, 2010 or on some convenient Sale Day hereafter, that is to say:

5. (a) FOR CASH: The Master in Equity will require a deposit of 5% on the amount of the bid (in cash or equivalent) to be paid immediately upon submission of the bid, such deposit to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance within twenty (20) days same to be forfeited and applied to the costs and Plaintiff's debt.

the event an advertisement is published prior to the entry of this written Order, such advertisement is hereby ratified and approved nunc pro tunc as if same were published after the entry of this Order.

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

FIRST: To the 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 Total Debt secured by the Mortgage.

NEXT: Any surplus will be held pending 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(s) in possession herein, the Sheriff of Spartanburg County is ordered and directed to eject and remove from the Premises the occupant(s) of the property sold, together with all personal property located thereon (except fixtures and any other personalty encumbered by the Mortgage, which shall become the property of the successful bidder), and put the successful bidder or his assigns in such peaceable possession.

10. And it is further ORDERED, ADJUDGED AND DECREED that each Defendant(s) named herein and all persons whosoever claiming under him, her, them or it 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.

11. IT IS FURTHER ORDERED that, pursuant to S.C. Code Ann. Section 30-9-31 (Supp. 1987), the deed of conveyance made pursuant to this sale shall be indexed in the grantor index by the Register of Deeds Office 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. The undersigned Master in Equity will retain jurisdiction to do all the 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), SCRCP.


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

All that certain, piece, parcel, or lot of land, situate, lying and being in the State of South Carolina, County of Spartanburg, west of I-26 and north of Reidville Road (S.C. Highway 296) and being shown and designated as Lots No. 81 and 82, containing 2.38 acres, more or less, on a plat of Shadowlakes, a private community, made by Blackwood Associates, Inc., dated April 11, 1988 and recorded in Plat Book 103 at Page 685 in the Office of the Register of Deeds for Spartanburg County. For a more complete and particular description, reference is hereby made to the above referred to plat and record thereof.

This being the same property conveyed to [Southern Management Incorporated of Spartanburg, Inc.] by deed of Joe Betras and Henya Betras dated November 14, 2007, and recorded on November 15, 2007 in the Office of the Spartanburg County Register of Deeds in Book 90-A at Page 497.

TMS # 6 20-14 074.00

Property Address: 330 Ashwick Court, Spartanburg, SC 29301


Gordon G. Cooper
Master-In-Equity

Spartanburg, South Carolina
February 24, 2010

2010 FEB 24 AM 11:02

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CLERK OF COURT