

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 First National Bank of the South,)
)
 Plaintiff,)
)
 v.)
)
 Concord Acquisition Group, LLC,)
 Lawson Hayes, Jr., and James A. Anderson,)
)
 Defendants.)
 _____)

IN THE COURT OF COMMON PLEAS
 C/A No. 2009-CP-42-04063

**JUDGMENT OF
 FORECLOSURE AND SALE**

(Deficiency Requested against
 Concord Acquisition Group, LLC,
 Lawson Hayes, Jr., and
 James A. Anderson)

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2010 MAR 12 AM 9:04

Pursuant to Rule 53 SCRCP, the above-entitled matter was referred to the Master in Equity by Order of Reference filed on November 9, 2009 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 Thursday, March 11, 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 July 24, 2009 in the Office of the Clerk of Court for Spartanburg County, South Carolina.
2. The Lis Pendens was filed on July 24, 2009.

3. The Defendant Concord Acquisition Group, LLC, (“Concord” or “Borrower”) was served with the Lis Pendens, Summons, and Complaint of First National Bank of the South (“FNBS”) on July 30, 2009, as evidenced by the Affidavit of Service filed on August 11, 2009.

4. The Defendant Lawson Hayes, Jr. was served with the Lis Pendens, Summons, and Complaint of FNBS on July 30, 2009, as evidenced by the Affidavit of Service filed on August 11, 2009.

5. The Defendant James A. Anderson was served with the Lis Pendens, Summons, and Complaint of FNBS on August 5, 2009, as evidenced by the Affidavit of Service filed on August 11, 2009.

6. The Defendants Concord and Lawson Hayes, Jr. filed a timely Answer to the Complaint on August 21, 2009, and an Amended Answer on August 24, 2009.

7. The Defendant James A. Anderson filed a timely Answer to the Complaint on or about August 20, 2009. The Answer filed by James A. Anderson contains a Cross Claim against Lawson Hayes, Jr. which will be heard at a later date.

8. On May 25, 2004, the Borrower made, executed and delivered to FNBS a promissory note (hereinafter the “Note”) whereby the Borrower promised to pay to the order of FNBS the principal sum of One Million Seven Hundred Seventy Five Thousand and 00/100 Dollars (\$1,775,000.00), together with interest at a variable rate equal to the sum of the prime rate in effect and as published in the Wall Street Journal plus .50 percent per annum (Prime plus .50%), with an initial rate of 4.50%. A true and correct copy of the Note is of record herein.

9. On May 25, 2004, in order to secure the indebtedness represented by the Note, and to secure other obligations as set forth therein, the Borrower executed and delivered to FNBS a Mortgage (the “Mortgage”) encumbering real property located in Spartanburg County, South

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Carolina (the "Premises") which is more fully described below.

10. The Mortgage was recorded on June 2, 2004 at 3:27 p.m. in the records of Spartanburg County, South Carolina in Mortgage Book 3238 at Page 971. A true and correct copy of the Mortgage is of record herein.

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

12. On May 25, 2004, the Borrower executed an Assignment of Leases and Rents, which assigned all its rents, issues and profits derived from the Premises to FNBS. The Assignment of Leases and Rents was recorded on June 2, 2004 at 3:27 p.m. in the records of Spartanburg County, South Carolina in Deed Book 80-L at Page 819. A true and correct copy of the Assignment of Leases and Rents is of record herein.

13. On May 25, 2004, the Defendant Lawson Hayes, Jr. executed a Guaranty (the "Hayes Guaranty") by which he unconditionally guaranteed payment of all indebtedness of Concord to FNBS, including the obligation evidenced by the Note, up to a maximum principal liability of \$1,775,000.00. A true and correct copy of the Hayes Guaranty is of record herein.

14. On May 25, 2004, the Defendant James A. Anderson executed a Guaranty (the "Anderson Guaranty") by which he unconditionally guaranteed payment of all indebtedness of Concord to FNBS, including the obligation evidenced by the Note, up to a maximum principal liability of \$1,775,000.00. A true and correct copy of the Anderson Guaranty is of record herein.

15. On February 2, 2006, FNBS executed a Release, whereby the following property was released from the Mortgage:

All that certain piece, parcel or lot of land with all improvements thereon or to be constructed thereon lying and being situate in the State of South Carolina, County of Spartanburg being shown and designated as Lot 2, containing 0.43 acre, more or less, on plat prepared for Concord Acquisition Group, LLC by Souther Land Surveying, Inc., PLS dated January 12, 2006, and recorded February 6, 2006 in Plat Book 159 at Page 297, records of Spartanburg County, South Carolina.

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16. The Release was recorded in the Office of the Register of Deed for Spartanburg County on February 3, 2006 in Mortgage Book 3603 at Page 831. A true and correct copy of the Release is of record herein.

17. The Note was thereafter modified by a Commercial Debt Modification Agreement dated October 17, 2006 executed between FNBS and the Borrower, which provided for an additional advance of \$200,000.00 to the Borrower that would constitute a future advance secured by the Mortgage. A true and correct copy of the Commercial Debt Modification Agreement is of record herein.

18. The Note was most recently modified by a Commercial Debt Modification Agreement dated November 1, 2007 executed between FNBS and the Borrower executed an additional, which changed the maturity date to May 25, 2009, changed the interest rate to a fixed rate of interest at 7.00%, and changed the amount of the monthly payment on the Note. A true and correct copy of the Commercial Debt Modification Agreement dated November 1, 2007 is of record herein.

19. Further references to the Note shall mean the Note as modified by the Commercial Debt Modification Agreements dated October 17, 2006 and November 1, 2007.

20. The Borrower is in default under the terms of the Note and Mortgage by reason of its failure to pay installments on the Note prior to maturity, and its failure to pay the Note by its stated maturity date of May 25, 2009.

21. The Borrower is further in default for failure to pay *ad valorem* taxes on the Premises for tax year 2008. FNBS advanced \$38,450.52 to pay the delinquent property taxes and is entitled to recover the amount advanced as part of the amount secured by the Mortgage.

22. FNBS provided the Borrower with all notices required under the Note, the Mortgage and applicable law.

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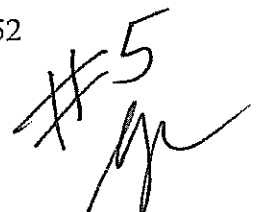
23. As a result of the default set forth above, FNBS accelerated the Note and demanded payment in full, and has placed the Note and Mortgage in the hands of its attorneys for collection by foreclosure.

24. The Note provides that the holder shall be entitled to recover reasonable attorneys fees and costs, in the event the Note is referred to an attorney for collection. The sum of \$7,500.00 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 Mortgages. 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.

25. The Plaintiff, in its Complaint, specifically demanded a deficiency judgment against Concord Acquisition Group, LLC, Lawson Hayes, Jr., and James A. Anderson, jointly and severally, for any portion of the indebtedness that remains unsatisfied after application of the proceeds of sale. The Plaintiff has reserved the right to waive deficiency at any time up to the time of the sale.

26. 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	\$1,646,609.36
(b) Interest as of 3/10/10 (\$329.38 per diem)	\$ 94,295.91
(c) Late Fees	\$ 2,000.00
(d) Appraisal Costs	\$ 3,400.00
(e) Taxes	\$ 38,450.52

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(f)	Attorneys fees	\$ 7,500.00
(g)	Costs of collection prior to Hearing (filing, reference)	\$ 507.00
	Total Debt secured by Note sand Mortgages, including interest to date shown	\$1,792,762.79

Interest for the period from the date shown in (b) 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 debts to comprise the amount of Plaintiff's debt secured by the Mortgage through the date to which such interest is computed.

27. At the time of the commencement of the action, FNBS held an additional interest in the Premises by virtue of an Option of First Refusal dated May 25, 2004 and recorded June 8, 2004 in the Office of the Register of Deeds for Spartanburg County in Deed Book 80-M at Page 657, however, FNBS has since filed a Cancellation of its Option.

28. The Premises are also affected by a Declaration of Cross Easement recorded February 6, 2006 in the Office of the Register of Deeds for Spartanburg County in Deed Book 85-A at Page 177.

29. The Plaintiff is entitled to a judgment of foreclosure and sale of the Premises described in the Note, and Mortgage.

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 **\$1,792,762.79**, representing the Total Debt set out in paragraph 26 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 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 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.



(b) Interest on the bid shall be paid to the day of compliance at the rate of 7.0%.

(c) The sale shall be subject to taxes (including specifically any delinquent taxes) and assessments, existing easements and restrictions and easements and restrictions of record, and any other senior encumbrances.

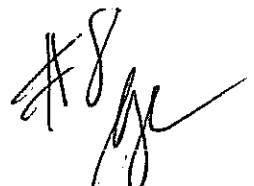
(d) Purchaser to pay for deed stamps (if applicable) and cost of recording the deed.

(e) If the Plaintiff's representative is not in attendance at the scheduled time of the sale, the sale shall be canceled and sold on some subsequent Sale Day after due advertisement.

(f) If Plaintiff is the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses, and the indebtedness of Plaintiff in full, Plaintiff may pay to the Master in Equity only the amount of the costs and expenses, crediting the balance of the bid on Plaintiff's indebtedness. No deposit shall be due if Plaintiff is the successful bidder.

6. A deficiency judgment having been demanded, the sale shall reopen for additional bids at 11:00 a.m. on the 30th day following the initial Sale Day, except that if the Plaintiff shall waive its right to a deficiency judgment the sale will become final on the Sale Day and immediate compliance may be had.

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 is, 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 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.

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At the hearing on this matter, the undersigned directed that the property be advertised for sale. In 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 Mortgages.

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

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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), SCRPC.

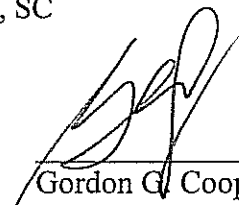
13. The following is a description of the Premises ordered to be sold:

ALL that certain piece, parcel or lot of land with all improvements thereon or to be constructed thereon lying and being situate in the State of South Carolina, County of Spartanburg fronting on U.S. Highway 176 (North Pine Street Extension), being shown and delineated as containing 2.232 acres, more or less, on plat made for Concord Acquisition Group, LLC by James V. Gregory Land Surveying dated May 13, 2004, and recorded herewith in the Office of the Register of Deeds for Spartanburg County, S.C. Reference to the aforesaid plat is hereby made in aid of further description.

This being the identical property heretofore conveyed unto CONCORD ACQUISITION GROUP, LLC by deed of COLLEGE PARK OFFICES and H.B.J. PROPERTIES dated May 25, 2004, and recorded June 2, 2004 in Deed Book 80-L at Page 815, in the Office of the Register of Deeds for Spartanburg County, South Carolina.

Tax Map Number: 7-12-07-200.00
7-12-07-206.00 (subsequently released) and
7-12-07-200.01

Property Address: 205 North Pine Street
Spartanburg, SC



Gordon G. Cooper
Master-In-Equity

Spartanburg, South Carolina
March 11, 2010

FILED
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SPARTANBURG COUNTY
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