

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 GrandSouth Bank,)
)
 Plaintiff,)
)
 -vs-)
)
 Grant Estates, LLC, and)
 David A. Keller,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS

C.A. NO. 2011-CP-42-4034

**Master's Order and Judgment of
 Foreclosure and Sale**

(No Deficiency Requested)

**(Non-eligible under the Home Affordable
 Modification Program)**

(Non-Owner Occupied Dwelling)

This matter came before the undersigned as Master in Equity for Spartanburg County, South Carolina, for a hearing on December 15, 2011, attended by M. Kevin McCarrell of Smith Moore Leatherwood LLP, attorneys for Plaintiff. The matter was referred to me for the purposes of taking the testimony and issuing a final decree with any appeal therefrom to be directly to the South Carolina Court of Appeals.

FINDINGS OF FACT

1. I find that this action was duly and properly instituted by the filing of the Summons and Complaint on September 21, 2011, and the service of the Summons and Complaint upon each Defendant as shown by the proofs of service heretofore filed.

2. I find that the Lis Pendens was duly and properly filed in the Office of the Clerk of Court of Spartanburg County on September 21, 2011.

3. I find that Defendants David A. Keller ("Keller") and Grant Estates, LLC ("Grant Estates") are in default as shown by the affidavit filed herein.

4. I find that notice of the time and place of this hearing has been duly given to each Defendant.

5. I find that this action was instituted by Plaintiff for the purpose of foreclosing the

Mortgage given to it by Keller.

6. I find that for value received, Grant Estates made, executed and delivered to Plaintiff an Universal Note dated on or about September 27, 2009, in the amount of \$1,477,600.00 (the "Note"), with interest thereon as set forth in the Note. The Note is a renewal of an earlier universal note dated June 27, 2007. Other terms and conditions are stated in the Note which is of record herein.

7. I find that in order to secure the payment of the Note described herein, Keller made, executed and delivered to Plaintiff a Mortgage, in writing, dated June 27, 2007, covering real property in Spartanburg County, South Carolina, which is the same as that described in the Complaint (the "Mortgaged Property"). The Mortgage was duly recorded on July 3, 2007 in the Register of Deeds Office for Spartanburg County in Book 3921 at Page 448.

8. I find that it appears that Defendants failed to make the payments as called for under the Note, and, as a result, Plaintiff exercised its option to declare the entire unpaid balance due and payable and has placed the Note and Mortgage in the hands of an attorney for collection.

9. I find that the Note was also secured by a Mortgage covering real property located in Greenville County, which was the subject of foreclosure action, *GrandSouth Bank v. Grant Estates, LLC, et al*, C.A. No. 2010-CP-23-7182 (the "Greenville Foreclosure"). Pursuant to a Settlement Agreement in the Greenville Foreclosure dated August 19, 2011, guarantors for the Note executed Confessions of Judgments as follows:

- a) David Keller \$539,000.00;
- b) Joe Ernie Willis \$289,000.00; and
- c) Robert Scroggs \$289,000.00.

The total sum of these Confessions of Judgment are the basis of the amount due and owing as

principal on the Note.

10. I find that the Note and Mortgage provide that in the event this matter is referred to an attorney for collection, the makers would pay all costs of collection including reasonable attorneys' fees. The sum of \$2,375.00 is a reasonable fee to allow as attorneys' fees to Plaintiff's attorneys for the services performed and anticipate to be performed until final adjudication of the within action, under the terms of the Note and Mortgage. In making this award, I have considered the time, effort, difficulty and results obtained by Plaintiff's attorneys, as well as their professional standing and the usual fee awarded in Spartanburg County in similar matters. I find that the record and evidence fully substantiates such a fee. The services anticipated to be performed until final adjudication contemplate completion of this matter within a reasonable time and do not include exceptional circumstances delaying conclusion beyond the normal time.

11. I find that 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 attorneys' fees, secured by the Note and Mortgage, is as follows:

Principal	\$1,117,000.00
Interest accrued as of 12/15/11	12,531.61
Cost of collection	300.00
Attorneys' fees	<u>2,375.00</u>
TOTAL	\$1,132,206.61

12. I find that subsequent to December 15, 2011, interest at the Note default rate of 16% should be added to such judgment debt in order to comprise the amount of Plaintiff's debt secured by the Mortgage to the date to which such interest is computed.

13. I find that Plaintiff's Mortgage is a first lien on the Mortgaged Property.

14. I find that Plaintiff is seeking foreclosure of the Mortgage but has waived its right to a personal or deficiency judgment against Defendants. However, the Judgment of Confession

of Keller filed on August 24, 2011, shall remain in effect.

15. I find that the Note and Mortgage involve a business debt and are not eligible to participate in the Home Affordable Modification Program (“HMP”). I find that the Note and Mortgage are not subject to modification under the 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 matter identified as *RE: Mortgage Foreclosures and the Home Affordable Modification Program (HMP)* (“Justice Toal’s First Order”).

16. I find that Plaintiff has complied with Justice Toal’s First Order by including the allegation in its duly signed Complaint that the Note and Mortgage are not subject to Justice Toal’s First Order.

17. I find that the Mortgaged Property is not an 'Owner-Occupied dwelling' as set forth in the Administrative Order of the Honorable Jean Hoefer Toal, Chief Justice of the South Carolina Supreme Court, dated May 2, 2011, in the matter identified as *Re: Mortgage Foreclosure Actions* ("Justice Toal's Second Order"), and therefore, is not subject to the procedures set forth in Justice Toal's Second Order.

18. I find that Plaintiff has complied with Justice Toal’s Second Order by including the allegation in its duly signed Complaint that the Note and Mortgage are not subject to Justice Toal’s Second Order.

CONCLUSIONS OF LAW

I therefore conclude that Plaintiff should have judgment of foreclosure of its Mortgage and the Mortgaged Property should be ordered sold at public auction after due advertisement.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that:

1. There is due to Plaintiff on the obligation and Mortgage set forth in the Complaint

the sum of \$1,132,206.61 representing the total debt due Plaintiff as set out in paragraph 11, supra, together with interest at the rate provided therein until the date of compliance with the sale.

2. The amount due in the preceding paragraph (see total debt as set forth in paragraph 11, supra), and later accrued interest and costs shall constitute the total judgment debt due Plaintiff and shall bear interest hereafter at the Note rate of 16% per annum (\$496.31 per day).

3. The Defendants liable for the aforesaid Mortgage debt shall, on or before the date of sale of the Mortgaged Property hereinafter described, pay to Plaintiff, or to Plaintiff's attorney, the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

4. On default of payment at or before the sale of the property, the Mortgaged Property described in the Complaint as hereinafter set forth, shall be sold by me, as Master, 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 date hereafter (and should the regular day of judicial sales fall on a holiday, then and in such event, the sales date shall be on the Tuesday next succeeding such holiday) on the following terms, that is to say:

a) For cash -- I, as Master, shall require at the time of bid a deposit of five percent (5%) of the amount of the bid (in cash or equivalent), the same to be applied on the purchase price only upon compliance with the bid, but in case of noncompliance within twenty (20) days, the same is to be forfeited and applied to the costs and then to Plaintiff's debt.

b) The sale shall be subject to taxes, assessments, easements, and restrictions.

c) Purchaser is to pay for deed stamps and the cost of recording the deed and for interest on the debt from December 15, 2011, through the date of compliance.

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 me, as

Master, only the amount of the costs, disbursements, and expenses, crediting the balance of the bid on Plaintiff's indebtedness.

6. Because a personal and deficiency judgment has not been sought, the sale will be final as of the close of bidding on sales day.

7. I, as Master, 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 Mortgaged Property sold. Plaintiff, or any other party to this action, may become a purchaser at such sale, and if, upon such sale being made, the purchaser or purchasers should fail to comply with the terms thereof within twenty (20) days after the date of sale, I, as Master, shall readvertise the Mortgaged Property for sale on the next or some other subsequent sales date, at the risk of the former highest bidder, and the Mortgaged Property shall be sold from time to time thereafter until compliance shall be secured.

8. I, as Master, shall apply the proceeds of the sale as follows: first, to the payment of the amount of the costs and expenses of this action; next to the payment to Plaintiff or to 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.

9. Any surplus will be held pending the further order of this Court.

10. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that in the event the successful bidder is other than 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 to put the successful bidder or its assigns in full, quiet and peaceful possession of the premises without delay and to keep the successful bidder or its assigns in such peaceful possession.

11. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each Defendant named herein and all persons whomsoever claiming under Defendants, be forever barred and foreclosed of all right, title and interest and equity of redemption in the same mortgaged premises so sold, or any part thereof.

12. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to S.C. Code § 30-9-31, the deed of conveyance pursuant to this sale shall be indexed in the grantor index by the Register of Deeds Office in the name of the owners of record of the subject property immediately prior to the execution of the deed, as well as in the name of the Master in Equity as grantor.

13. This Court will retain jurisdiction to do all necessary acts incident to this foreclosure, including, but not limited to, the issuance of a writ of assistance in disposing of any surplus funds pursuant to Rule 71(c), SCRPC.

14. 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, being shown on a plat entitled, "Survey for David A Keller, being a portion of the property shown in P.B. 33, Page 10" dated June 15, 2001, prepared by Ralph Smith, P.L.S. and recorded in the Office of the Register of Deeds for Spartanburg County, South Carolina, June 20, 2001 in Plat Book 150 at Page 507, reference to said plat is hereby craved for a complete metes and bounds description.

ALSO,

ALL that certain piece, parcel or lot of land, situate, lying and being in the State of South Carolina, County of Spartanburg, being shown as a triangular plot lying northeast of a surface treated road on a plat entitled, "Survey for Guy M. McCall" dated October 7, 1961, prepared by C.A. Seawright R.L.S. and recorded in the Office of the Register of Deeds for Spartanburg County, South Carolina in Plat Book 43 at Page 408, reference to said plat is hereby craved for a complete metes and bounds description.

ALSO,

ALL that certain piece, parcel or lot of land beginning at a point on the public road, and running thence with the road, N 9-55 W. 340 feet; thence N 40 W 380 feet to a point which is the corner of Lot No. 3; thence continuing with said road; N 4-13 W. 395 feet, N 12-10 E. 379 feet to the forks of road; thence the following courses and distances: S 81-19 E 625 feet, S 86-29 E. 346 feet to a point in the road which is a common corner between lots 4 and 5; thence S. 85-32 E 1050 feet to a point in bend of road; thence continuing with the road, S 58-46 E 236 feet, S 68-46 E 218 feet, S 63 E 208 feet, S 59 E 156 feet; thence S 20 E 264 feet; thence S 44-15 W 1586 feet; thence N 52-37 W 1224 feet; thence S 73-12 W 540 feet to the beginning, containing 80.3 acres, more or less; said lot being bounded by lands of W.C. Anderson, Mans, and lots conveyed to T.M. Gaston and Mary Gaston Gee; for a fuller description of said lot, see plat made by W.N. Willis, C.E., dated October 30, 1919, recorded in plat book 39 at page 102-105 in the ROD Office for Spartanburg County, SC subdivision of lands of W.C. Anderson.

LESS AND EXCEPT:

ALL that certain piece, parcel or lot of land, situate, lying and being in the State of South Carolina, County of Spartanburg, being shown as "3.0 ACRES" on a plat entitled "Hellen O. Mullen & Ena A. Threlkeld Property" dated 5-19-1979, surveyed for Robert P. Jr. & Kay G. Harrington, prepared by Lindsey & Associates and recorded in the Office of the Register of Deeds for Spartanburg County, South Carolina, July 26, 1979 in Plat Book 83 at Page 783, reference to said plat is hereby craved for a complete metes and bounds description.

ALL that certain piece, parcel or lot of land, situate, lying and being in the State of South Carolina, County of Spartanburg, being shown as "3.0 ACRES" on a plat entitled "Hellen O. Mullen & Ena A. Threlkeld Property" dated 5-19-1979, surveyed for Randy K. & Candi H. Vaughn, prepared by Lindsey & Associates and recorded in the Office of the Register of Deeds for Spartanburg County, South Carolina, August 1, 1979 in Plat Book 83 at Page 827, reference to said plat is hereby craved for a complete metes and bounds description.

ALL that certain piece, parcel or lot of land, situate, lying and being in the State of South Carolina, County of Spartanburg, being shown as "4.41 ACRES" on a plat entitled; "GORDON H. & JULIE A. LENDERMAN" dated Nov. 8, 2001, prepared by B.P. Barber & Associates, Inc. and recorded in the Office of the Register of Deeds for Spartanburg County, South Carolina, in Plat Book 151 at Page 581, reference to said plat is hereby craved for a complete metes and bounds description.

ALL that certain piece, parcel or lot of land, situate, lying and being in the State of South Carolina, County of Spartanburg, being shown as containing 3.44 acres more or less on a plat entitled, "GORDON H. & JULIE A. LENDERMAN, BEING A PORTION OF THE PROPERTY DESCRIBED IN D.B. 62Q, PAGE 739" dated

May 10, 2001, prepared by Ralph Smith, P.L.S. and recorded in the Office of the Register of Deeds for Spartanburg County, South Carolina, May 22, 2001 in Plat Book 150 at Page 297, reference to said plat is hereby craved for a complete metes and bounds description.

ALL that certain piece, parcel or lot of land, situate, lying and being in the State of South Carolina, County of Spartanburg, being shown as "0.128 AC." and as "1.662 AC." on a plat entitled "BLUE HARRINGTON McCULLOUGH" dated Sept. 27, 1995, prepared by John Robert Jennings R.L.S. and recorded in the Office of the Register of Deeds for Spartanburg County, South Carolina, March 12, 1996 in Plat Book 132 at Page 881, reference to said plat is hereby craved for a complete metes and bounds description.

ALL that certain piece, parcel or lot of land, situate, lying and being in the State of South Carolina, County of Spartanburg, being shown as "3.00 ACRES" on a plat entitled "Hellen O. Mullen & Ena A. Threlkeld" dated July 9, 1985, revised 11/11/85, prepared by Lavender, Smith & Associates and recorded in the Office of the Register of Deeds for Spartanburg County, South Carolina, December 26, 1985 in Plat Book 95 at Page 688, reference to said plat is hereby craved for a complete metes and bounds description.

ALL that certain piece, parcel or lot of land, situate, lying and being in the State of South Carolina, County of Spartanburg, being shown as "0.151 AC." on a plat entitled "Randy K. & Candi H. Vaughn" dated Sept. 27, 1995, prepared by John Robert Jennings R.L.S. and recorded in the Office of the Register of Deeds for Spartanburg County, South Carolina, March 12, 1996 in Plat Book 132 at Page 880, reference to said plat is hereby craved for a complete metes and bounds description.

TMS # 4-03-00-013.00

15. IT IS FURTHER ORDERED, ADJUDGED AND DECREED 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.

AND IT IS SO ORDERED.

Gordon G. Cooper
Master in Equity for Spartanburg County

Dated: December ____, 2011