

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

South Carolina Bank and Trust, N.A.)
successor by acquisition to New)
Commerce Bank,)

Civil Action No. 2009-CP-42-1867

Plaintiff,)

vs.)

MASTER'S REPORT AND
JUDGMENT OF
FORECLOSURE AND SALE

Derriso Properties, LLC, Anthony)
Derriso, Evelyn Derriso, and Charles)
Hornack,)

Defendants.)

Pursuant to Rule 53 SCRCPP, the above-entitled matter was referred to the undersigned to make appropriate findings of fact and conclusions of law with authority to enter a final judgment in the case.

Pursuant to the Order of Reference, a hearing was held, attended by Plaintiff's attorney. At the hearing, testimony was taken, and from the testimony and evidence, I find and conclude as follows:

FINDINGS OF FACTS

1. The Lis Pendens, Summons, and Complaint were filed on March 31, 2009.
2. An Amended Summons, Amended Complaint, and Amended Lis Pendens were filed on July 17, 2009
3. The pleadings were served on all defendants. No answer or response was filed by Defendants Derriso Properties, LLC, Anthony Derriso, and Evelyn Derriso, and

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they are in default, Defendant Charles Hornack filed an Answer and Crossclaim. The crossclaim was not heard, but Defendant Charles Hornack reserves the right to pursue the crossclaim after the foreclosure sale of the property that is the subject of this action.

4. All defendants were notified by mail of the time, date, and place of the hearing in this matter. 11

5. On or about January 30, 2008, a promissory note was given by Defendant Derriso Properties, LLC to Plaintiff in the original principal amount of One Hundred Twenty Four Thousand (\$124,000.00) Dollars (the "Note") with interest thereon, the terms of which are more fully explained by reference thereto.

6. The obligation due on the Note is secured by the following mortgages:

a. Mortgage from Anthony Derriso and Evelyn Derriso to New Commerce Bank dated July 6, 2001, which was recorded in the Office of the Register of Deeds for Spartanburg County on July 9, 2001, in Book 2518 at Page 311 ("Mortgage 1");

b. Mortgage from Derriso Properties, LLC, Anthony Derriso, and Evelyn Derriso to New Commerce Bank dated June 25, 2003, which was recorded in the Office of the Register of Deeds for Spartanburg County on July 7, 2003 in Book 3002 at Page 715 ("Mortgage 2"); and 11

c. Mortgage from Defendant Derriso Properties to New Commerce Bank dated July 3, 2003, which was recorded in the Office of the Register of Deeds for Spartanburg County on July 7, 2003 in Book 3002 at Page 747 ("Mortgage 3").

7. The Note was personally guaranteed by Defendants Anthony Derriso and Evelyn Derriso.

8. New Commerce Bank was thereafter acquired by Plaintiff, and Plaintiff is now the holder of the Note and Mortgages 1, 2, and 3.

9. Payments have not been made when due on the Note, and the Note is in default. 11

10. The Plaintiff specifically demands a deficiency judgment against Defendants Derriso Properties, LLC, Anthony Derriso and Evelyn Derriso.

11. Plaintiff has placed the note and mortgage in the hands of its attorney for collection.

12. The sum of \$5,500.00 is a reasonable fee to allow as attorney's fees for Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of the within action, in accordance with the terms of the note and mortgage.

13. The amount due and owing on the promissory note, with interest at the rate provided in the note, and other costs and expenses of collection, including attorney's fees, secured by the mortgage, is as follows:

(A) Principal	\$122,509.73
(B) Interest through March 2, 2010	\$ 11,581.49
(C) Late Charges	\$ 238.60
(D) Costs of collection prior to hearing (service, filing, etc.)	\$ 898.00
(E) Attorney's Fee	\$ 5,500.00

Total debt secured by mortgage
including interest to date shown \$140,727.82

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 after the date of judgment at the rate of

8.00% per annum on the judgment debt 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.

14. The Plaintiff is seeking the usual foreclosure of the mortgage and has in the Complaint expressly demanded the right to a deficiency judgment. Since a deficiency judgment is demanded, the bidding will remain open for a period of thirty (30) days, as provided by law.

15. If surplus funds remain after the sale of the property described in the mortgage, a hearing will be held pursuant to Rule 71(c) of the South Carolina Rules of Civil Procedure to determine the validity and priority of the liens.

16. Defendant Charles Hornack claims an interest in the property that is the subject of this action by virtue of a Contract For Deed, which was recorded in the Office of the Register of Deeds for Spartanburg County on December 31, 2003, in Book 79-K at Page 417. However, the interest of Charles Hornack is junior and subordinate to Plaintiff's first mortgage lien.

CONCLUSIONS OF LAW

I, therefore, conclude as follows:

1. Plaintiff is entitled to judgment against Defendant Derriso Properties, LLC for the sum of \$140,727.82, which amount shall be reduced by the proceeds received from the sale of property described in the Mortgage; and

2. Plaintiff is entitled judgment against Defendants Anthony Derriso and Evelyn Derriso for the sum of \$140,727.82, which amount shall be reduced by the proceeds received from the sale of property described in the Mortgage; and

3. Plaintiff is entitled judgment of foreclosure of the Mortgage, and the mortgaged property should be ordered sold at public auction after due advertisement, as more particularly set forth below. The three parcels shall be sold separately at auction. 11

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. That there is due and owing to the Plaintiff on the obligation and mortgage set forth in the Amended Complaint the sum of \$140,727.82, representing the total debt due Plaintiff as set out in paragraph 13 above, 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 ("Total Debt" as set forth in paragraph 12 above and later accrued interest on the principal) shall constitute the total judgment due to the Plaintiff and shall bear interest hereafter at the rate of 8.00% 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 Plaintiff's attorney, the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action. 11

4. That on default of payment at or before the time herein indicated, the mortgaged premises hereinafter described, be sold as three separate parcels by the undersigned Master in Equity at public auction, in Spartanburg County, State of South Carolina, on some convenient sales day hereafter, on the following terms, that is to say:

A. FOR CASH: The undersigned Master will require a deposit of 5% on the amount of the bid (in cash or equivalent) same 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 balance of the bid shall, be paid to the day of compliance at the rate of 8.00% per annum.

C. The sale shall be subject to taxes and assessments, existing easements, and easements and restrictions of record.

D. Purchaser to pay for deed stamps and the cost of recording the deed.

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

6. Deficiency judgment being demanded, the sale will remain open for thirty (30) days pursuant to Section 15-39-720, S.C. Code of Laws, 1976, as amended.

7. That the undersigned 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 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 undersigned Master 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.

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

FIRST: To the payment of the amount of 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 debt and interest or so much thereof as the purchase money will pay on the same; and if the proceeds of sale be insufficient to pay the amount hereinbefore authorized to be paid out of said proceeds, with the costs and expenses, the plaintiff's debt and interest, the parties hereto entitled to such deficiency have judgment therefore against the Defendant.

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, 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(s) named herein and all persons whosoever claiming under him, them or it, be forever barred and foreclosed of all right, title, interest, and equity or redemption in the said mortgaged premises so sold, or any part thereof.

11. IT IF FURTHER ORDERED that the deed of conveyance made pursuant to said sale shall contain the name of only the first-named Plaintiff and the first-named Defendant, and the Defendant who was the titleholder of the mortgaged property at the

time of the 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.

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.

13. A description of the premises herein ordered to be sold is as follows:

All that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Spartanburg, in the Town of Lyman, and being more particularly described as Lot No. 210, as shown on Plat No. 2 of a series of three plats entitled "Pacific Mills Property at Lyman" made by Gooch & Taylor, Surveyors all dated May 24, 1954 and recorded in Plat Book 31 at Pages 1 through 9, RMC Office for Spartanburg County, SC and having such metes and bounds as shown thereon.

This being the same property conveyed to Anthony C. Derriso and Evelyn Allen Derriso by Deed of Stephen E. Frady dated July-6, 2001, and recorded on July 9, 2001 in the Office of the RMC for Spartanburg County, South Carolina in Deed Book 74-C at Page 690.

TMS # 5-15-10-058.00

ALSO:

All that certain piece, parcel or lot of land, with improvements thereon, lying and being in the County of Spartanburg, State of South Carolina, located in the Town of Wellford, fronting on Main Street, being known as containing 0.82 acre, more or less, as shown on a plat prepared for Robert C. Showalter and Angela L. Showalter by Wolfe & Huskey, Inc., Surveyors dated April 17, 1991, and recorded in Plat Book 112, at Page 769, RMC Office for Spartanburg County, South Carolina. Property is more recently shown on plat for Delbert T. Tangeman by Joe E. Mitchell, RLS, dated December 14, 1993, and recorded in Plat Book 123, Page 889, said RMC Office, reference being hereby specifically made to said plat of survey in aid of description.

This being the same property conveyed to Derriso Properties, LLC, and Anthony C. Derriso, and Evelyn Allen Derriso by Deed of Secretary of Housing and Urban Development dated June 12, 2003, and recorded on July 7, 2003 in the Office of the RMC for Spartanburg County, South Carolina in Deed Book 78-F at Page 49.

TMS # 5-16-06-018.00

ALSO:

All that certain piece, parcel or lot of land with improvements thereon, lying, situate and being in the State and County aforesaid, located on U.S. Highway 29 at Duncan in Beech Springs Township, being shown and designated as Lot No. 2 on a plat prepared for S.R. Rhodes Property by H. S. Brockman, Surveyor, dated March 12, 1940, recorded in Plat Book 17 at Page 33, Register of Deeds for Spartanburg County, South Carolina.

Less, however, that certain piece of property containing 27.5 feet, more or less, conveyed to the SCDOT to be used for highway right-of-way.

This being the same property conveyed to Derriso Properties, LLC by Deed of First Citizens Bank and Trust Company dated July 3, 2003 and recorded on July 7, 2003 in the Office of the RMC for Spartanburg County, South Carolina in Deed Book 78-F at Page 65.

TMS # 5-20-01-038.00

AND IT IS SO ORDERED.

G. Gordon Cooper
Master In Equity for Spartanburg County

Spartanburg, South Carolina

March 2, 2010

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