

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG)	
)	
CertusBank, N.A.,)	Civil Action No. 2011-CP-42-4212
)	
Plaintiff,)	
)	
vs.)	DECREE OF FORECLOSURE
)	(Foreclosure)
Jaaz Enterprises, LLC, Gerald W. Abele)	(Deficiency Demanded)
a/k/a Gerald Abele, and Department of the)	
Treasury – Internal Revenue Service,)	
)	
Defendants.)	
)	

Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, the above-entitled foreclosure action was referred to me for the purpose of conducting a hearing on the same, taking testimony, determining all issues of fact and law, and entering a final judgment thereon.

A hearing was conducted before me and testimony was taken in the above-captioned case on January 4, 2012. Plaintiff was represented by the law firm of Roe Cassidy Coates & Price, P.A., D. Sean Faulkner ~~appearing.~~ *and Gerald W. Abele appeared* ~~no appearances were made for the Defendants.~~ From the records and from the testimony and evidence introduced, I make the following findings of fact and conclusions of law:

FINDINGS OF FACT:

1. An Amended and Restated Lis Pendens was filed on October 3, 2011, in the Office of the Spartanburg County Clerk of Court.
2. The Summon and Complaint were filed in this matter on October 3, 2011, in the Office of the Spartanburg, County Clerk of Court.

3. Defendants have been properly served with, or accepted service of, the Civil Action Coversheet, Amended and Restated Lis Pendens, Certificate of Exemption from ADR, ~~Amended~~ Summons for Relief, and ~~Amended~~ Foreclosure Complaint.

4. Defendants Jaaz Enterprises, LLC and Gerald Abele a/k/a Gerald W. Abele are in default as shown by Affidavit on file herein. The Department of the Treasury – Internal Revenue Service filed an answer in this matter.

5. According to Affidavit filed herein, no Defendant in default is actively in the Military Service of the United States of America, as contemplated under the Servicemembers Civil Relief Act, U.S.C.A., Title 50, App. § 501, et seq., and any amendments thereto.

6. This action was brought for the foreclosure of a real estate mortgage, the property covered by the mortgage is in Spartanburg County, and this Court has jurisdiction over all parties and the subject property.

7. All Defendants and/or attorneys of record were notified of the date, time, and place of the hearing in this matter and were provided with a copy of the Order of Reference.

8. On May 4, 2009, the Honorable Jean Hofer Toal, Chief Justice of the South Carolina Supreme Court, in the matter identified as *In Re: Federal National Mortgage Association ("Fannie Mae") Loans Subject to Foreclosure Sale*, issued a Temporary Restraining Order "preventing the foreclosure sale of any property arising out of a loan owned or guaranteed by petitioner or Freddie Mac or held by a servicer who has signed an agreement to participate in the [Home Affordable Modification Program]."

9. Plaintiff has filed and served an affidavit on the Defendants stating that the Loan, Note, and Mortgage, which are the subject of this foreclosure action, are not owned or guaranteed by Fannie Mae or Freddie Mac and are not owned, guaranteed, or managed by a

servicer who has signed an agreement to participate in the Home Affordable Modification Program, and therefore are not subject to modification under the Homeowner Affordability and Stability Plan, the Home Affordable Modification Program, and/or the United States Treasury Supplemental Directive 09-01 (collectively referred to hereafter as "HMP").

10. A copy of Plaintiff's Affidavit, together with the Certificate of Service, has been filed with the Court and is of record herein.

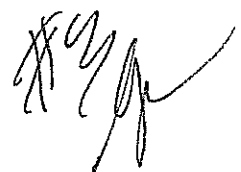
11. Defendants have not filed a response to Plaintiff's Affidavit.

12. I find that the Loan, Note, and Mortgage giving rise to this foreclosure action are not subject to modification under the HMP and that the Temporary Restraining Order issued by the Supreme Court has been lifted. I further find that Plaintiff has complied with the Administrative Order executed by the Honorable Jean Hoefler Toal, Chief Justice of the South Carolina Supreme Court, in the matter identified as *Re: Mortgage Foreclosures and the Home Affordable Modification Program (HMP)*, on May 22, 2009, and that Plaintiff is entitled to proceed with this foreclosure action.

13. The Loan, Note, and Mortgage giving rise to this foreclosure action are not subject to any stay or right of modification under S.C. Supreme Court Order No. 2011-05-02-01.

14. Plaintiff's Certification of Exemption from Administrative Order No. 2011-05-02-01, verifying that the loan involved herein is not owner occupied as defined in the Order, has been filed with the Court.

15. I find that the Loan, Note, and Mortgage giving rise to this foreclosure action are exempt from Administrative Order No. 2011-05-02-01. I further find that Plaintiff has complied with the Administrative Order No. 2011-05-02-01 executed by the Honorable Jean Hoefler Toal,

A handwritten signature in black ink, located in the bottom right corner of the page. The signature is stylized and appears to consist of several overlapping loops and lines.

Chief Justice of the South Carolina Supreme Court, and that Plaintiff is entitled to proceed with this foreclosure action.

16. I find that for value received, Defendant Jaz Enterprises, LLC (hereinafter sometimes referred to as "Debtor") executed and delivered a promissory note to CommunitySouth Bank and Trust dated October 11, 2006, containing a promise to pay the principal sum of One Hundred Twelve Thousand and no/100 Dollars (\$112,000.00), together with interest thereon upon such terms as are contained in said Note.

17. I find that the promise to pay contained in the Note included a promise to pay the principal amount due, together with interest thereon upon such terms as are contained in said Note.

18. I find that in order to secure the payment of said Note, and all renewals, extensions, substitutions, and/or modifications thereof, and/or any future advances, Defendant Jaz Enterprises, LLC executed and delivered to CommunitySouth Bank & Trust a mortgage (hereinafter "Mortgage") dated October 11, 2006, in the amount of One Hundred Twelve Thousand and no/100 Dollars (\$112,000.00), whereby there was conveyed unto Plaintiff, by way of said Mortgage, the property described as follows:

All that certain piece, parcel or lot of land, with improvements thereon, lying, situate and being in the State of South Carolina, County of Spartanburg, being known and designated as Lot No. 9, in Block A, Cleveland Heights, on plat made by Gooch & Taylor, dated July 16, 2950, and recorded in Plat Book 25, at Pages 486-490, ROD for Spartanburg County, South Carolina.

This is the same property conveyed unto the Debtor by deed from Spar Investments, LLC, dated October 11, 2006, recorded on October 11, 2006, in Deed Book 86-X, at Page 706, ROD for Spartanburg County, South Carolina.

Address: 102 Penarth Road, Spartanburg, South Carolina 29304.
TMS#: 7-15-03-050.00

19. I find that the Mortgage was recorded in recorded in the Register of Deeds Office for Spartanburg County in Mortgage Book 3763 at Page 201 on October 11, 2006, and secures all extensions, renewals, modifications and substitutions and all future advances from Plaintiff to Debtor or other future obligations of Debtor to Plaintiff under any promissory note, contract, guaranty or other evidence of debt as of the date of the Mortgage or executed after the Mortgage whether or not the Mortgage is specifically referred to in the evidence of debt.

20. I find that the Mortgage constitutes a fixture filing under the South Carolina version of the Uniform Commercial Code granting Plaintiff a perfected first priority security interest in the fixtures and equipment located on the mortgaged premises.

21. I find that the Note was further secured by that certain Guaranty Agreement executed by Defendant Gerald Abele a/k/a Gerald W. Abele (hereinafter sometimes referred to as "Guarantor") in favor of the CommunitySouth Bank & Trust on October 11, 2006, with renewals on October 10, 2007, December 10, 2007, February 10, 2008, May 10, 2008 and July 16, 2008.

22. I find that the Note was further secured by that certain Assignment of Leases and Rents executed by Defendant Jaz Enterprises, LLC, in favor of CommunitySouth Bank & Trust on October 11, 2006, and recorded in Deed Book 86-X at Page 708 on October 11, 2006, in the Register of Deeds Office for Spartanburg County.

23. I find that Defendant Jaz Enterprises, LLC executed and delivered to CommunitySouth Bank & Trust renewal notes dated October 10, 2007, December 10, 2007, February 10, 2008, May 10, 2008 and July 16, 2008. The term "Note" as used herein shall refer to the original note dated October 11, 2006, as modified by renewal notes dated October 10, 2007, December 10, 2007, February 10, 2008, May 10, 2008 and July 16, 2008.

Handwritten signature and initials in the bottom right corner of the page. The initials appear to be "JS" or "JS" with a flourish.

24. I find that Defendant Jaz Enterprises, LLC, did convey the mortgaged premises to Gerald Abele by Warranty Deed dated October 31, 2007 and recorded on November 1, 2007 in Deed Book 89-Y at Page 151, in the Register of Deeds Office for Spartanburg County, subject to the Mortgage and Assignment of Lease and Rent.

25. I find that as of January 21, 2011, CertusBank, N.A. acquired from the Federal Deposit Insurance Company ("FDIC"), as receiver, certain assets of CommunitySouth Bank and Trust listed here and above, including, without limitation, the Note, Mortgage, Assignment of Rents and Guaranty Agreements set forth in this Complaint. CertusBank, N.A. (hereinafter the "Plaintiff") is the current owner and holder of said Note, Mortgage, Assignment of Rents, and Guaranty Agreements.

26. The Mortgage constitutes a first lien upon the subject property.

27. Defendants were the record owner of the subject property as of the date the Amended and Restated Lis Pendens was filed.

28. The Note and Mortgage provided:

a. that upon the failure by Debtor to pay the debt as specified therein, the holder thereof might, at its option, declare the entire outstanding indebtedness immediately due and payable;

b. for the recovery of such sums advanced as may be necessary to protect the priority of the Mortgage and the property secured thereby; and

c. for attorney's fees and costs to be added to the outstanding indebtedness should the First and Mortgage be placed in the hands of an attorney for collection.

29. Debtor has defaulted in the payments due under the Note and Plaintiff has exercised its option to declare the entire outstanding indebtedness immediately due and payable.

A handwritten signature in black ink, appearing to be "J. B. [unclear]", located in the bottom right corner of the page.

30. Plaintiff has placed the Note, Mortgage and related loan documents in the hands of Roe Cassidy Coates & Price, P.A. for collection/foreclosure.

31. Plaintiff is entitled to foreclose the Mortgage.

32. Plaintiff's attorney has assumed responsibility for the institution of this action and has performed an appropriate search of the title on the subject property. Plaintiff's attorney has been responsible for the preparation of the Lis Pendens, Summons and Complaint, amendments thereto, Affidavit of Default, Order of Reference, Notice of Hearing, Proposed Final Decree, Notice of Sale, and other documents pertaining to the service and finalization of this action. Additionally, Plaintiff's attorney has arranged for service of process, has scheduled and prepared for the hearing, has provided reinstatement and/or payoff figures if requested, has arranged for the presence of a court reporter to take testimony at the hearing in this matter and has had telephone conversations with the Defendant(s) if requested. Future duties of Plaintiff's attorney include forwarding copies of the Decree to Defendant(s), advising the Defendant(s) of the date of sale, arranging and coordinating Plaintiff's bid, representation of Plaintiff at the sale, and preparation of after-sale documentation as required. Anticipated services to be performed do not include exceptional circumstances delaying conclusion beyond the normal time. In light of the above, the size of the mortgage debt, and Plaintiff's attorneys' qualifications, Three Thousand Five Hundred and no/100 Dollars (\$3,500.00) is a reasonable attorney's fee in this matter. Plaintiff is further entitled to reimbursement of its costs in this matter, which to date total Eight Hundred Twenty-Three and 30/100 Dollars (\$823.30).

33. The amount due and owing on the Note and secured by the Mortgage, as of the date of the hearing, with interest at the rate provided in the Note (currently 6.00%), and other

Handwritten signature or initials in black ink, located in the bottom right corner of the page.

costs and expenses of collection, exclusive of costs and attorney's fees, with a daily accrual rate of \$16.08 is as follows:

Principal Balance:	\$96,494.15
Interest Due:	\$ 5,037.33
Sums Advanced To Pay Taxes	\$ 3,657.41
Late Charges Due:	\$1,190.19
BALANCE DUE:	\$106,379.08

34. The anticipated balance due and owing by Debtor as of Sales Day February 6, 2012, shall be One Hundred Six Thousand Nine Hundred Nine and 72/100 Dollars (\$106,909.72), exclusive of costs and attorney's fees, with a daily accrual rate of \$16.08.

35. I find that, according to the public records, the Defendant(s) set out hereinafter has been joined as party Defendant(s) by virtue of the fact that said Defendants claims or may claim a lien or other interest in the property which is the subject of this foreclosure action, and that said lien or claim is subordinate to the first lien of the Plaintiff:

a. The Department of the Treasury for its Agency, the Internal Revenue Service, is made a party to this proceeding by way of that certain Federal Tax Lien against Gerald W. Abele and Noretta E. Tocher dated March 26, 2009 and recorded in Federal Tax Lien Book 12 at Page 115 on April 9, 2009.

b. Gerald Abele is also made a party to this action by virtue of that certain conveyance by Debtor to Gerald Abele by virtue of that certain Deed dated October 31, 2007 and recorded on November 1, 2007 in Deed Book 89-Y at Page 151, Spartanburg County records.

36. Plaintiff alleges that it is entitled to a deficiency judgment against Debtor and Guarantor, for any deficiency owing after application of the proceeds from the sale of the mortgaged premises. I find that the Plaintiff is entitled to have the mortgaged premises, together with the equipment and fixtures located thereon, sold, any equity of redemption barred, with the exception of the statutory right of redemption of the United States of America as set forth in Title

28 U.S.C.A. 2410 (c), with the proceeds to be applied towards costs and expenses, attorney's fees, and the mortgage indebtedness.

CONCLUSIONS OF LAW:

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

1. This action is not stayed by the May 4, 2009, order of the Honorable Jean Hoefer Toal, Chief Justice of the South Carolina Supreme Court, in the matter identified as *In Re: Federal National Mortgage Association ("Fannie Mae") Loans Subject to Foreclosure Sale*, or the Administrative Order executed by the Honorable Jean Hoefer Toal, Chief Justice of the South Carolina Supreme Court, in the matter identified as *Re: Mortgage Foreclosures and the Home Affordable Modification Program (HMP)*, on May 22, 2009. In addition, I further find that Plaintiff has complied with the Administrative Order executed by the Honorable Jean Hoefer Toal, Chief Justice of the South Carolina Supreme Court, in the matter identified as *Re: Mortgage Foreclosure Actions* (S.C. Supreme Court Order No. 2011-05-02-01), and that Plaintiff is entitled to proceed with this foreclosure action.
2. Plaintiff should have judgment of foreclosure of the Mortgage and the mortgaged property should be sold at public auction after due advertisement.
3. As of the date of hearing, there is due to Plaintiff, under the terms of the Note and Mortgage the sum of One Hundred Six Thousand Three Hundred Seventy Nine and 08/100 Dollars (\$106,379.08), plus attorney's fees of Three Thousand Five Hundred and no/100 Dollars (\$3,500.00) and all costs and expenses of this action which to date total Eight Hundred Twenty-Three and 30/100 Dollars (\$823.30), with interest on said debt from the date of hearing through the date of compliance at the contract rate (currently 6.00%).



4. Plaintiff's Mortgage be foreclosed and any equity of redemption of the named Defendant(s) and all persons who may claim under him, them, or it, be forever barred, with the exception of the statutory right of redemption of the United States of America as set forth in Title 28 U.S.C.A. 2410(c).

5. The mortgaged premises as described in the Complaint and previously in this Decree be sold at public auction on the next available sales day, or on some subsequent date designated by the Court.

6. The Clerk of Court or Interim Master in Equity for Spartanburg County, South Carolina, after having duly advertised the mortgaged premises sale according to the law and custom of this Court, shall sell the mortgaged premises described in the Complaint and previously in this Decree to the highest bidder, at public auction at the Spartanburg County Courthouse on the next available sales day, during the usual hours of public sale, on the following terms:

- a. the term of this sale shall be cash;
- b. the purchaser shall pay for deed stamps and costs of recording the deed;
- c. each successful bidder, other than Plaintiff, shall be required to deposit with the Clerk of Court or Interim Master in Equity at the time the bid is accepted, cash or certified check in the sum of five percent (5%) of the bid as evidence of good faith;
- d. interest shall accrue on the bid at the rate set forth in the Note through the date of compliance;
- e. in the event that the purchaser fails or refuses to comply with the terms of the sale within twenty (20) days of the close of bidding, the deposit shall be forfeited and applied first to the costs, then to Plaintiff's debt, and the Clerk of Court or Interim Master in Equity shall



forthwith advertise and resell the property upon the same terms on some subsequent date, as designated by the Court, at the risk of the former purchaser, until obtaining full compliance with the terms of the sale;

f. upon the purchaser's compliance with the terms of the sale, the Clerk of Court or Interim Master in Equity shall execute a good and sufficient deed of conveyance to the premises, and the purchaser shall thereby be entitled to possession of the premises;

g. in the event the purchaser is other than Defendant(s) in possession herein, the Sheriff of Spartanburg County is ordered to remove from the premises the occupants of the property sold, together with all personal property located thereon, and put the purchaser or his/her assigns in full, quiet, and peaceable possession of said premises without delay, and to keep said purchaser or his/her assigns in such peaceable possession;

h. Plaintiff seeking a deficiency judgment, the sale shall remain open for a period of thirty (30) days after the initial sale; and

i. the property will be sold without any warranty or representation as to title or otherwise by Plaintiff or Plaintiff's counsel.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED:

That if Plaintiff or Plaintiff's representative fails to appear at the scheduled sale, the property shall be withdrawn from sale and the sale shall be rescheduled for the next available sales day.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED:

That the proceeds derived from the sale shall be applied as follows:

First, to the payment of all costs and expenses of this action, including a fee for the Plaintiff's attorneys as heretofore provided and any Guardian ad Litem fees or fees for attorneys



appointed by the Court; next to the payment of the amount due upon the Note and Mortgage owned by Plaintiff; and finally, after disbursing the proceeds of the sale as aforesaid, that any balance thereafter remaining be held by the Clerk of Court or Interim Master in Equity subject to further Order of this Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED:

That if Plaintiff is the successful bidder at the sale, for a sum not exceeding the amount of costs, expenses, and Plaintiff's indebtedness in full, Plaintiff may pay to the Clerk of Court or Interim Master in Equity only the amount of the costs and expenses, crediting the balance of the bid on Plaintiff's indebtedness.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED:

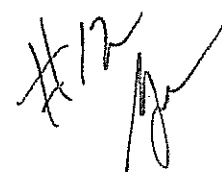
That the afore-described property shall be sold subject to any property taxes that are due, past due, or accruing as of the date of sale and/or compliance and that the sale shall be final at the close of bidding.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED:

That, in compliance with § 30-9-31 of the Code of Laws of South Carolina, 1976, as amended, any deed of conveyance made pursuant to this sale shall be indexed in the grantor index by the Register of Deeds Office for Spartanburg County in the name of the owner of record of the subject property immediately prior to the execution of the Clerk's deed, as well as in the name of the Clerk of Court or Interim Master in Equity who executes such deed as grantor.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED:

That in the event there be any deficiency remaining on the indebtedness due Plaintiff after the proceeds of sale are applied to the indebtedness due as outlined above, said deficiency shall be assessed against Jaz Enterprises, LLC and Gerald Abele a/k/a Gerald W. Abele and



Plaintiff shall have judgment against Jaaz Enterprises, LLC and Gerald Abele a/k/a Gerald W. Abele for the amount of said deficiency.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED:

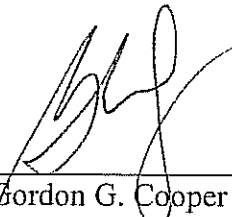
That any prior lien is of no force and effect as to the within described property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED:

That this action shall remain open for any other proper purpose.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED:

The 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.



Gordon G. Cooper
Master in Equity for Spartanburg County

Spartanburg, South Carolina

Date: 