

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )  
 )  
First Citizens Bank and Trust )  
Company, Inc., )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
Mitchell D. Page, )  
 )  
Defendant(s). )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
C.A. No.: 2011-CP-42-4214

**ORDER OF FORECLOSURE**

Pursuant to Rule 53, SCRPC, the above-entitled matter was referred to the undersigned to make appropriate findings of facts and conclusions of law with authority to enter a final judgment cause. Any appeal from this Order is to the Supreme Court.

Pursuant to the said Order of Reference, a hearing was held on January 5, 2012, attended by the Plaintiff's attorney David R. Price, Jr. The testimony was taken, which is reported herewith, and from the testimony and evidence, I find, conclude, and order as follows:

FINDINGS OF FACT:

1. The Lis Pendens was filed on September 27, 2011 and the Summons and Complaint was filed on October 3, 2011.
2. Service was made upon the Defendant named in this Order as shown by the proof of service filed herein.
3. Defendant Mitchell D. Page is in default as shown by the Affidavit and Order of Default and Reference filed November 18, 2011.
4. This court finds that mortgage loan is not owned, securitized or guaranteed



by Fannie Mae or Freddie Mac, nor is Plaintiff a servicer participating in the Home Affordable Mortgage Program (“HMP”). This Court therefore finds that the Note and Mortgage are not subject to modification under 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 the matter identified as *RE: Mortgage Foreclosures and the Home Affordable Mortgage Program (HMP)*.

5. I further find that pursuant to the administrative order issued by Chief Justice Jean Toal of the South Carolina Supreme Court on May 2, 2011, in the matter identified as *RE: Mortgage Foreclosure Actions*, Defendants were served with Notice of Right to Foreclosure Intervention, filed October 3, 2011. Defendants failed to exercise their rights by contacting Plaintiff’s attorney as directed in the Notice and are therefore have not complied with the Administrative Order, as set forth in the Certification of Mortgagor Non-Compliance, being filed simultaneously herewith.

6. I find all Notice Requirements to be met.

7. For value received, Defendant Mitchell D. Page, executed and delivered a Consumer Real Estate Note to First Citizens Bank and Trust Company, Inc., dated March 23, 2004, containing a promise to pay the Plaintiff the principal sum of One Hundred Forty-One Thousand Forty-Eight and 43/100ths (\$141,048.43) Dollars, together with interest thereon upon such terms as are contained in said Note, a copy of which is of record.

8. In addition, as security for the above-referenced Promissory Note and all extensions, renewals, modifications or substitutions thereof, Defendant Mitchell Page executed and delivered to the Plaintiff a Mortgage of Real Estate of even date and

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identical amount, whereby there was conveyed unto the Plaintiff property located in the County and State aforesaid, which said Mortgage was recorded in the Office of the Register of Deeds for Spartanburg County in Mortgage Book 3192 at Page 430, on March 29, 2004. A copy of the aforementioned Real Estate Mortgage is also of record.

9. The titleholder(s) of record in and to the portion of subject property secured by said Mortgage is Defendant Mitchell D. Page, who is the original mortgagor(s).

10. Under the terms of the Consumer Real Estate Note and Mortgage of Real Estate securing same, if at any time any portion of principal or interest shall be past due and unpaid, or if any of the conditions and requirements in said documents not be complied with, then the whole principal sum and accrued interest shall, at the option of the legal holder thereof, become immediately due and payable and collectable by foreclosure. Defendant Mitchell D. Page has defaulted on the above-described Consumer Real Estate Note and Mortgage, there having been no payment made since payment became due and owing on February 13, 2011, and under the terms of the subject Consumer Real Estate Note and Mortgage of Real Estate, Plaintiff has declared the entire outstanding indebtedness to be immediately due and payable. Although demand for payment and/or "Notice of Right to Cure" has been made or given in accordance with said loan documents and the Code of Laws of South Carolina, 1976, as amended, the subject mortgage loan account remains in arrears.

11. The Consumer Real Estate and Mortgage of Real Estate, provide for the collection of all attorney fees incurred by Plaintiff, in an amount not less than fifteen percent (15%) of the amount owing on the Note, besides all costs and expenses incident

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upon such collection, in the event of default. The Court finds it appropriate to award the Plaintiff attorney fees in the sum of \$2,500.00, which is less than fifteen (15%) of the total amount of principal, interest, and late charges due and owing under the Note(s), for services performed and anticipated to be performed until final adjudication of the within action, under the terms of the Consumer Real Estate 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.

12. The amount due and owing on the Consumer Real Estate Note and Mortgage of Real Estate, with interest at the rate provided in said loan documents, together with finance fees and late fees applicable under the terms of said loan documents, and all other costs and expenses of collection, including an attorney's fee, secured by said Consumer Real Estate Note and Mortgage, is as follows:

|   |                 |
|---|-----------------|
| (a) Principal balance due as of January 5, 2012:                          | \$86,710.05     |
| (b) Interest from July 14, 2011 to January 5, 2012<br>at 5.85% per annum: | 9,839.11        |
| (c) Late Charges:   | 237.04          |
| (d) Costs of collection prior to hearing (service, filing, etc.):         | 627.91          |
| (e) Attorney's fee:   | <u>2,500.00</u> |

TOTAL DEBT secured by Promissory Note and Mortgage of Real Estate,

including interest to date shown: \$99,914.11

Interest for the period from the date shown in (b) above through the date of this Judgment at the 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 per diem rate of \$13.90 through the date of compliance with the bid 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 in computed.

13. The Plaintiff is seeking, and I find it appropriate to grant, foreclosure of the Mortgage of Real Estate, as well as a deficiency judgment against Defendant Mitchell D. Page, pursuant to S.C. Code Ann. §29-3-660 (1976).

CONCLUSIONS OF LAW:

I, therefore, conclude that the Plaintiff should have judgment of foreclosure of the Mortgage and the mortgaged property should be ordered sold at public auction after due advertisement.

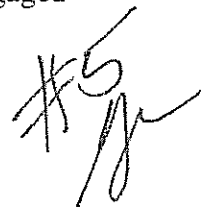
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. There is due to the Plaintiff on the obligation and Mortgage set forth in the Complaint the sum of \$99,914.11, representing the total debt due Plaintiff as set out in paragraph Twelve (12) supra., 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 (the "total debt" as set forth in paragraph Twelve (12) supra., and later accrued interest on the principal) shall constitute the total judgment debt due the Plaintiff and shall bear interest hereafter at the rate of 5.85% per annum.

3. That the Defendant(s) liable for the aforesaid mortgage debt shall on or before the date of sale of the property hereinafter described pay to the Plaintiff, or the Plaintiff's attorney, the amount of Plaintiff's 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 described in the Complaint, as hereinafter set forth, be sold by the Master in Equity for Spartanburg County 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 day thereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event, the sales day shall be on the following Tuesday), on the following terms, that is to say:

- A. FOR CASH: The Master-in-Equity will require a deposit of 5% on the amount of the bid (in cash or equivalent) at time of the bid, same to be applied on the purchase price only upon compliance with the bid, but in case of noncompliance within twenty (20) days, same to be forfeited and applied to the costs and Plaintiff's debt.
- B. Bidder shall be responsible for Interest on the bid amount at the rate of 5.85% from the date of sale through the date of compliance with the bid.
- C. The sale shall be subject to taxes and assessments, to existing easements and restrictions, and to any other senior encumbrances.
- D. Purchaser to pay for deed stamps and costs of recording the deed.

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

6. A personal or deficiency judgment having been demanded, the bidding will remain open for thirty (30) days after the date of sale in Spartanburg County, with the sale to be final upon that date.

7. That the Master in Equity for Spartanburg County, 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 or deed(s) 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 Master-in-Equity may advertise the said premises for sale on the next available sales day, at the risk of the former highest bidder, and so from time to time thereafter until a full compliance shall be secured.

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

FIRST: To 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 of the Plaintiff or Plaintiff's attorney of the amount of the Plaintiff's debt and interest or so much thereof as the purchase money will pay on the same.

NEXT: Any surplus will be held pursuant to Rule 71 (c) SCRCF pending the 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 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 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 named herein and all persons whosoever claiming under him, them, or it, be forever barred and foreclosed of all right, title and interest and equity of redemption in the said mortgaged premises so sold, or any part thereof.

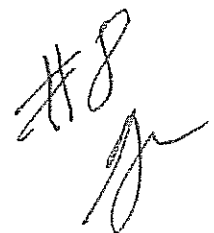
11. It is further ORDERED, ADJUDGED AND DECREED that pursuant to S.C. Code Ann. §30-9-31 (1991), the deed(s) of conveyance made pursuant to this sale shall be indexed in the grantor index by the Register of Deeds in the name of the owner of record of subject property immediately prior to execution of the deed, as well as in the name of the Master-in-Equity for Spartanburg County who executes such deed as grantor.

12. 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.

13. 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 without further notice to the mortgagor(s) and disposing of any surplus funds pursuant to Rule 71(c) SCRPC.

14. The following are description(s) of the premises herein ordered to be sold:

All that certain piece, parcel or lot of land, with all improvements thereon, situate, lying and being in the State of South Carolina, County of Spartanburg, being shown and designated as Lot #24, containing .37 acres more or less, on a plat of a survey for Mitchell D. Page by Butler Associates Reg. Land Surveyor, dated April 30, 1998 and recorded in Plat Book 141 at page 170 on May 5, 1998 in the RMC Office for Spartanburg

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County, S.C.

This being the same property conveyed to Mitchell D. Page by deed of A.L. "Red" Ravan, Inc., on February 6, 1996 and recorded in Deed Book 63-V at page 251 on February 7, 1996 in the RMC Office for Spartanburg County, S.C.

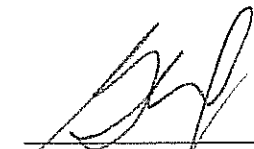
Also, All that certain piece, parcel or tract of land, located on Durham Street, Spartanburg County, South Carolina, being known and described as Lot 26 of Park Hills Subdivision and being shown and designated on a certain plat entitled "Park Hills A Development at Landrum, Spartanburg County, S.C. By J.Q. Bruce, Reg. Surveyor, recorded in Plat Book 48 at page 42 in the RMC Office for Spartanburg County, S.C.

This being the same property conveyed to Mitchell D. Page by deed from A.L. Revan, Jr., a/k/a A.L. Raven, Jr., on September 28, 1995 recorded in Deed Book 63-H at page 692 on October 3, 1995, in the RMC Office for Spartanburg County, S.C.

Also, All that certain piece, parcel or tract of land, located on Durham Street, Spartanburg County, South Carolina, being shown and designated as Lot #27 of Park Hills Subdivision and being shown and designated on that certain play entitled "Park Hills A Development at Landrum, Spartanburg County, S.C. Owners-Emma & A.L. Ravan, Jr. Feb. 1995," prepared by J.Q. Bruce, Reg. Surveyor, recorded in Plat Book 48, page 42 in the RMC Office for Spartanburg County, S.C.

This being the same property conveyed to Mitchell D. Page by deed from A.L. "Red" Raven, Inc., on February 6, 1996 and recorded in Deed Book 63-V at page 249 on February 7, 1996 in the RMC Office for Spartanburg County, S.C.

Spartanburg County TMS No(s): 1-07-08-020.00 (Lot 24)  
1-07-08-018.00 (Lot 26)  
1-07-08-017.00 (Lot 27)

  
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The Honorable Gordon G. Cooper  
Master-in-Equity for Spartanburg County

Spartanburg, South Carolina  
Date: JANUARY 5, 2012

