

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Gerald Smith,)
)
 Plaintiff,)
)
 v.)
)
 Parnell L. McEntyre, Felisa G.)
 McEntyre and American Express)
 Travel Related Services,)
)
 Defendants.)
)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

Case No.: 2009-CP-42-5451

**ORDER AND JUDGMENT FOR
 FORECLOSURE AND SALE**
 (DEFICIENCY JUDGMENT DEMANDED
 AGAINST PARNELL L. MCENTYRE
 AND FELISA G MCENTYRE)

FILED
 CLERK OF COURT
 2010 FEB 15 AM 9:48

Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, and by Order of Reference, this case was referred to the undersigned as Master in Equity for Spartanburg County, to make appropriate findings of fact and conclusions of law, with authority to enter a final judgment in the case. Any appeal from the final judgment so entered will be to the South Carolina Court of Appeals.

Pursuant to the Order of Reference a hearing was held February 15, 2010, and was attended by Plaintiff's attorney. Evidence was offered and received as shown in the Record of Hearing. Based on the evidence, I find and conclude as follows:

FINDINGS OF FACT and CONCLUSIONS OF LAW

1. The Lis Pendens, Summons and Complaint were filed on October 6, 2009.
2. The Defendants were properly served as appears by affidavits filed in the record.
3. Defendants Parnell L. McEntyre and Felisa G. McEntyre are in default.
4. According to the affidavit filed herein, no Defendant in default is in the military service of the United States of America, as contemplated under the Service Members' Civil Relief Act, 50 U.S.C. App. §501, *et seq.* and any amendments thereto.
5. All parties were properly notified of the time, date and place of the hearing in this

matter.

6. Defendant American Express Travel Related Services filed an Answer to protect any interest it may have by virtue of a Judgment in the amount of \$3212.96 plus costs dated May 4, 2009 and filed May 5, 2009 in the Spartanburg County Clerk of Court's Office as Judgment Roll No. 2009CP4201037. This lien is junior to Plaintiff's mortgage lien.

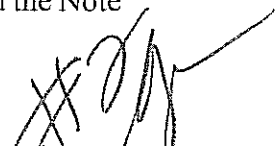
7. On August 13, 2008, for value received, Defendants Parnell L. McEntyre and Felisa G. McEntyre executed and delivered to Plaintiff a certain Note in writing in which they promised to pay Plaintiff the sum of Thirty thousand and 00/100 dollars, together with interest at the rate of 10 percent per annum on the unpaid balance, said principal and interest being payable in monthly installments of nine hundred sixty-eight and 02/100 dollars (\$968.02). Other terms and conditions are stated in the Note, which is an exhibit in the record.

8. In order to secure payment of said Note Defendants Parnell L. McEntyre and Felisa G. McEntyre on August 13, 2008 did make, execute and deliver to Plaintiff a Mortgage covering the same property located in Spartanburg County, South Carolina described in the Complaint and Lis Pendens.

9. The Mortgage was recorded in the Spartanburg County Register of Deed's Office in Mortgage Book 4124, Page 304.

10. The Mortgage constitutes a second lien on the mortgaged premises. The property was previously mortgaged by Defendant Parnell L. McEntyre and Felisa G. McEntyre on July 15, 2003, to Cunningham & Company, in the original principal amount of \$85,000.00. Said mortgage is recorded in Mortgage Book 3017, Page 301.

11. Payment due on the Note has not been made as provided in the Note since March 2009, with the last full installment made being that scheduled for February 2009, and the Plaintiff has elected to require immediate payment of the entire amount due thereon and has placed the Note and Mortgage in the hands of the attorney of record herein for collection by foreclosure.



12. The sum of \$2500.00 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 Mortgage.

13. The amount due and owing on the Note, with interest at the rate provided in the note, and other costs and expenses of the within action, including attorney fees, secured by the Note and Mortgage, is as follows:

The Plaintiff's affidavit of debt shows the Mortgage debt to be as follows:

(a)	Principal due as of March 1, 2009	\$ 24,846.45
(b)	Interest from March 1, 2009 through February 15, 2010 at 10.00 % interest per annum	\$ 2367.54
(d)	Costs prior to hearing	\$ 400.00
(e)	Attorney's fee	<u>\$2500.00</u>

TOTAL debt secured by note and mortgage
including interest to February 15, 2010 \$30,113.99

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 stated above (pursuant to the terms of the note and mortgage) on the judgment debt shall 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. Plaintiff specifically demands a deficiency judgment against Defendants Parnell L. McEntyre and Felisa G. McEntyre, pursuant to South Carolina Code Sections 29-3-650 and 29-3-660, for any deficiency in this action remaining after the sale of the mortgaged premises. Plaintiff reserves the right to withdraw his demand for deficiency judgment at any time prior to the foreclosure sale.

15. The Home Affordable Modification Program does not apply since the mortgage loan is not owned, securitized or guaranteed by the Federal National Mortgage Association or Federal

Home Loan Mortgage Corporation and the Plaintiff is not participating in the Home Affordable Modification Program.

16. Plaintiff is entitled to have judgment of foreclosure of the mortgage and the mortgaged property should be ordered sold at public auction after due advertisement, subject to the first mortgage.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. There is due to the Plaintiff on the obligation and Mortgage set forth in the Complaint the sum of \$30,113.99, representing the total debt due Plaintiff as set out in Findings of Fact 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 (the "Total Debt") and late accrued interest on the principal shall constitute the total judgment debt due the Plaintiff and shall bear interest hereafter at the rate of 10.00% per annum. The amount of the judgment shall be subject to increase to permit the Plaintiff to recover additional costs, commission and expenses not included in the judgment figures set forth herein. It may also increase to include supplemental compensation for attorney services not contemplated by the initial fee awarded. Jurisdiction over the fee award and total debt is reserved to facilitate the assessment and payment of any such costs and costs award

3. The Defendant 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.

4. On default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint shall be sold by the Master-In-Equity, or his agent under the direction of the Master in Equity, at public auction, at the Spartanburg County Courthouse, Spartanburg, South Carolina, and upon the date and time set forth in the Notice of Sale, and should the regular day of judicial sales fall on a legal holiday, then and in such event, the sales day shall be on Tuesday

next succeeding such holiday, 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 (unless Plaintiff is the successful bidder) the same to be applied to the purchase price upon compliance with the bid. In case of non-compliance within the time specified in the Notice of Sale, the deposit will 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 10.00% per annum.

c. The sale shall be subject to taxes and assessments, the existing mortgage to Cunningham & Company, existing easements and restrictions of record.

d. The Purchaser shall pay for the deed preparation and costs of recording the Deed and Deed Stamps.

5. If Plaintiff is the successful bidder at the sale for a sum not exceeding the amount of costs, expenses and the indebtedness due Plaintiff, 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.

6. As a deficiency judgment is demanded, the bidding will remain open for a period of thirty days, after the date of sale as provided by law in such cases; however, Plaintiff may waive any of its rights, including withdrawing its demand for a deficiency judgment prior top sale.

7. The Master in Equity will, by advertisement according to law, give notice of the date, time, and place of such 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. If the purchaser or purchasers at the sale should fail to comply with the terms thereof, then the Master in Equity may advertise the said premises for resale 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. Should Plaintiff, Plaintiff's attorney, or an agent of Plaintiff fail to appear at the time of sale, the within property shall be withdrawn from sale and sold at the next available sales date upon the same terms and conditions as set forth in this Judgment of Foreclosure and Sale or such terms as may be set forth in a supplemental order.

9. 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 debt and interest, or so much thereof as the purchase money will pay on the same;

NEXT: Any surplus shall be held pending further Order of this Court.

10. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that in the event the successful bidder is other than the Defendants in possession herein, the Sheriff, upon receipt of a Writ of Assistance or other order of ejectment, is authorized 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.

11. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendants named herein, and all persons whosoever claiming under Defendants, 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.

12. IT IS FURTHER ORDERED that the deed of conveyance made pursuant to said sale shall contain the names 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

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authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

13. The undersigned will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance.

14. The following is a description of the premises herein ordered to be sold:

All that certain piece, parcel or lot of land, lying and being situate in the State of South Carolina, County of Spartanburg, being shown and designated as Lot 12, Block 6, being shown and designated on a survey of Bondale Subdivision prepared by Gooch & Taylor, Professional Land Surveying, dated August 18, 1967 and recorded in the Register of Deeds Office for Spartanburg County in Plat Book 69 at page 228-235. For a more complete and accurate description refer to the above reference plat.


Being the same property conveyed to Parnell L. McEntyre and Felisa G. McEntyre from Five and One Associates by Deed dated December 28, 2001, recorded January 2, 2002, in Deed book 75-A, Page 318, in the official records for Spartanburg County, South Carolina.

Tax Map Number: 2 50-09-014.00
Address: 650 Upward Way, Spartanburg, SC 29303

15. Plaintiff does not warrant its title search to purchasers at foreclosure sale or other third parties, who should have their own title search performed on the subject property.

IT IS SO ORDERED.

This 15th day of February, 2010.



Gordon G. Cooper
Master in Equity for Spartanburg County

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