

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

BRANCH BANKING AND TRUST
COMPANY SUCCESSOR BY MERGER
TO BRANCH BANKING AND TRUST
COMPANY OF SOUTH CAROLINA,

Plaintiff,

vs.

JAMES A. ROBERTS; CAROLYN O.
ROBERTS A/K/A CAROLINE O.
ROBERTS; CITIFINANCIAL, INC.; and
BRANCH BANKING AND TRUST
COMPANY,

Defendants.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

C/A #: 2011-CP-42-3978

**MASTER'S
ORDER AND
JUDGMENT OF FORECLOSURE
AND SALE**

(Deficiency Judgment Demanded against
James A. Roberts and Carolyn O. Roberts
a/k/a Caroline O. Roberts)

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

Pursuant to Rule 53 SCRPC, 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 cause. Any appeal from this Order is to the Supreme Court.

Pursuant to the said Order of Reference, a hearing was held on the 15th day of December, 2011, at 10:30 a.m. attended by the attorneys of record, the testimony was taken, which is reported herewith, and from the testimony and evidence, I find and conclude as follows:

FINDINGS OF FACT

1. The Lis Pendens, Summons and Complaint were filed on September 15, 2011 in the Office of the Clerk of Court for Spartanburg County.
2. The Amended Lis Pendens, Amended Summons and Amended Complaint were filed on September 22, 2011.



3. Service was made upon the Defendants named in this Report as is shown by the proofs of service filed herein.

4. The Defendants Citifinancial, Inc. and Branch Banking and Trust Company are in default as shown by the affidavit filed herein.

5. The Defendants James A. Roberts and Carolyn O. Roberts a/k/a Caroline O. Roberts filed an Answer pro se herein.

6. 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 Servicemembers' Civil Relief Act, 50 U.S.C. app. §501, et seq., and any amendments thereto.

7. All Defendants in default and all attorneys of record and Defendants pro se were notified of the time, date, and place of hearing in this matter.

8. For value received, the Defendants James A. Roberts and Carolyn O. Roberts a/k/a Caroline O. Roberts made, executed, and delivered a Note dated October 10, 2002, promising thereby to pay to the order of the Plaintiff the sum of One Hundred Eleven Thousand Twenty-Six and 20/100 (\$111,026.20) Dollars, with interest at 7.625% per annum. Other terms and conditions are stated in the Note, which is of record herein.

9. For value received, the Defendants James A. Roberts and Carolyn O. Roberts a/k/a Caroline O. Roberts made, executed, and delivered a Retail Note Modification Agreement dated December 8, 2008, promising thereby to pay to the order of the Plaintiff the modification amount of Ninety-Seven Thousand One Hundred Eighty-Two and 05/100 (\$97,182.05) Dollars, with interest at 8.375% per annum. Other terms and conditions are stated in the Modified Note, which is of record herein.

10. To better secure the payment of the Notes described above, the Defendant James A. Roberts made, executed, and delivered to the Plaintiff a Mortgage in writing, dated October 10, 2002, covering real property in Spartanburg County, which is the same as that described in the Complaint. The Mortgage was duly recorded upon the records of the Register of Deeds for Spartanburg County, South Carolina in Book 2797 at Page 266 and modified in Book 4163 at Page 579.

11. This Mortgage constitutes a first mortgage lien covering the property therein described.

12. Any notice required by the terms of the Mortgage or by state or federal law has been given to the Defendant prior to the commencement of this action.

13. The Plaintiff in this action is the owner and holder of the Notes and Mortgage it is seeking to foreclose.

14. The titleholders of record in and to the subject real property as of the filing of the Lis Pendens in this action are the Defendants James A. Roberts and Carolyn O. Roberts a/k/a Caroline O. Roberts.

15. Payment due on the Notes has not been made as provided for therein, and the Plaintiff, as the holder thereof, has elected to accelerate payment of the entire indebtedness and has placed the Notes and Mortgage in the hands of the attorney herein for collection.

16. The sum of One Thousand Five Hundred and 00/100 (\$1,500.00) Dollars 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. Services anticipated to be performed until final adjudication contemplates completion of this matter within a reasonable time and does not include exceptional circumstances

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delaying conclusion beyond the normal time. The fees are also reasonable given the professional standing of Plaintiff's counsel and their experience in handling foreclosure matters. The fees awarded herein are also reasonable in light of the fees customarily awarded by this court for similar services in this locality.

17. The amount due and owing on the Notes, with interest at the rate provided on the Note, and other costs and expenses of collection, including an attorney's fee, secured by the Notes and Mortgage, is as follows:

a. Principal of note as of December 15, 2011	\$92,949.55
b. Interest from May 8, 2011 to December 15, 2011 at 8.375% per annum	\$4,343.78
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c. Late Charges	\$83.56
d. Appraisal/BPO Fees	\$125.00
e. Prior Foreclosure Expenses	\$125.00
f. Costs of collection prior to hearing (service, filing, etc.)	\$958.60
g. Attorney's fee	\$1,500.00
TOTAL	\$100,085.49

18. 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 8.375% per annum (pursuant to the terms of the Notes and Mortgage), 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.

19. The Plaintiff is seeking foreclosure of the Mortgage and has in the complaint demanded the right to deficiency judgment against James A. Roberts and Carolyn O. Roberts a/k/a Caroline O. Roberts pursuant to S.C. Code Ann. Section 29-3-660 (1976).

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20. The Defendants James A. Roberts and Carolyn O. Roberts a/k/a Caroline O. Roberts have or may claim an interest in the subject property by virtue of that Deed from James A. Roberts dated October 10, 2002 and recorded on October 17, 2002 in the office of the Register of Deeds for Spartanburg County in Book 76-R at Page 0755. The interest of the Defendants James A. Roberts and Carolyn O. Roberts a/k/a Caroline O. Roberts is junior and subordinate to the lien of the Plaintiff, and in the event there is a surplus from the sale of the subject property, the validity, priority, and amount of any such lien claim will be determined at a hearing subsequent to the sale in accordance with Rule 71(c), SCRPC.

21. The Defendant Citifinancial, Inc. has or may claim an interest in the subject property by virtue of that Mortgage from James A. Roberts and Carolyn O. Roberts dated June 25, 2004 and recorded on June 29, 2004 in the office of the Register of Deeds for Spartanburg County in Book 3254 at Page 586. The interest of the Defendant Citifinancial, Inc. is junior and subordinate to the lien of the Plaintiff, and in the event there is a surplus from the sale of the subject property, the validity, priority, and amount of any such lien claim will be determined at a hearing subsequent to the sale in accordance with Rule 71(c), SCRPC.

22. The Defendant Branch Banking and Trust Company has or may claim an interest in the subject property by virtue of that Confession of Judgment against Caroline O. Roberts a/k/a Caroline O. Lanford a/k/a Caroline Ogston Lanford dated November 24, 2006 and filed on July 23, 2007 in the office of the Clerk of Court for Spartanburg County in Judgment Roll # 291329. The interest of the Defendant Branch Banking and Trust Company is junior and subordinate to the lien of the Plaintiff, and in the event there is a surplus from the sale of the subject property, the validity, priority, and amount of any such lien claim will be determined at a hearing subsequent to the sale in accordance with Rule 71(c), SCRPC.

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CONCLUSIONS OF LAW

I, therefore, conclude as follows:

1. The Plaintiff should have judgment of foreclosure of the Mortgage, and the mortgaged property should be ordered sold at public auction after due advertisement.
2. The loan subject to foreclosure in this action is non-eligible under the Home Affordable Modification Program.

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 One Hundred Thousand Eighty-Five and 49/100 (\$100,085.49) Dollars, representing the Total Debt due Plaintiff as set out above, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date of this Order.
2. The amount due in the preceding paragraph (the "Total Debt" as set forth above, 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 8.375% per annum for the Mortgage.
3. That the Defendants James A. Roberts and Carolyn O. Roberts a/k/a Caroline O. Roberts 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.
4. That the loan subject to foreclosure in this action is non-eligible under the Home Affordable Modification Program.
5. 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 undersigned Master in Equity at public auction at the Spartanburg County Courthouse, in the City of Spartanburg, South Carolina, on some convenient sales day hereafter (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 undersigned Master in Equity will require a deposit of five (5%) percent 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 thirty (30) days same to be forfeited and applied to the costs and Plaintiff's debt.

(b) Interest on the bid shall be paid to the day of compliance at the rate of 8.375% for the Mortgage.

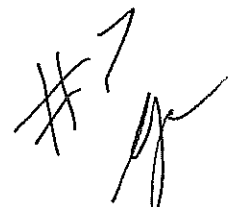
(c) The sale shall be subject to taxes and assessments, existing easements and restrictions and easements and restrictions of record.

(d) Purchaser to pay for cost of recording the deed.

(e) If the Plaintiff's representative is not in attendance at the scheduled time of the sale, the sale shall be canceled and sold on some subsequent sales day after due advertisement.

6. If Plaintiff is the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses, including costs and expenses incurred after the hearing, 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. No deposit shall be due if Plaintiff is the successful bidder.

7. Personal or deficiency judgment having been demanded against James A. Roberts and Carolyn O. Roberts a/k/a Caroline O. Roberts the sale will remain open for thirty (30) days pursuant to S.C. Code Ann. Section 15-39-720 (1976). Plaintiff may waive its right to a deficiency judgment in accordance with Rule 71, SCRCPP, at any time prior to the sale.

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8. That the undersigned 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 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 thirty (30) days after date of sale, the deposit shall be forfeited and the undersigned Master in Equity 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. At the hearing on this matter, the undersigned directed that the property be advertised for sale. In the event an advertisement is published prior to the entry of this written Order, such advertisement is hereby ratified and approved *nunc pro tunc* as if same were published after the entry of this Order.

9. That the undersigned 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 will 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 James A. Roberts and Carolyn O. Roberts a/k/a Caroline O. Roberts in possession herein and a Writ of Assistance is presented, the Sheriff of Spartanburg County is

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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. All valid tenant rights shall be protected pursuant to Protecting Tenants at Foreclosure Act of 2009.

11. And it is further ORDERED, ADJUDGED AND DECREED that the Defendants James A. Roberts and Carolyn O. Roberts a/k/a Caroline O. Roberts and all other Defendants with a lien found herein to be junior and subordinate to the lien of the Plaintiff and all persons whosoever claiming under him, them or it 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, pursuant to S.C. Code Ann. Section 30-9-31 (Supp. 1987), the deed 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 undersigned Master in Equity who executes such deed as grantor.

13. The undersigned Master in Equity will retain jurisdiction to do all the necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance and disposing of any surplus funds pursuant to Rule 71(c), SCRCF.

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

All that certain piece, parcel or lot of land in the County of Spartanburg, State of South Carolina, shown and designated as 3.00 acres upon a plat prepared for Carolyn C. Lane by Joe E. Mitchell, RLS, dated May 14, 1990, recorded in Plat Book 110, Page 125 at the ROD Office for Spartanburg County, South Carolina.

This is the same property as that property conveyed to James A. Roberts by deed of Donald C. Angell and Ruth G. Angell dated July 19, 1996 and

recorded July 22, 1996 in Deed Book 64-N, Page 191 at the ROD Office for Spartanburg County, South Carolina. Thereafter, James A. Roberts conveyed the property unto James A. Roberts and Carolyn O. Roberts, as joint tenants, with the right of survivorship, and not as tenants in common by deed dated October 10, 2002 and recorded October 17, 2002 in Deed Book 76-R, Page 0755 in the ROD Office for Spartanburg County, South Carolina.

TMS # 4 32-00 046.02

300 Willis Road
Woodruff, South Carolina 29388



Gordon G. Cooper
Master in Equity for Spartanburg County

15th day of December, 2011
Spartanburg, South Carolina

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