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| STATE OF SOUTH CAROLINA |) | |
| |) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF SPARTANBURG |) | |
| |) | |
| The Palmetto Bank |) | |
| |) | |
| Plaintiff, |) | FORECLOSURE DECREE |
| |) | 2009-CP-42-6670 |
| vs. |) | (Deficiency Sought) |
| |) | |
| Barbara Brannon and Spartanburg Housing |) | |
| Development, |) | |
| Defendants. |) | |
| _____ |) | |

2010 FEB 16 AM 10:25
 CLERK OF COURT
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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 February 16, 2010. Plaintiff was represented by the law firm of Roe Cassidy Coates & Price, P.A., Amber B. Glidewell, appearing. No appearances were entered for the Defendant. 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. The Amended and Refiled Lis Pendens was filed on October 21, 2009 in the Office of the Spartanburg County Clerk of Court.
2. The Summons and Complaint were filed on December 10, 2009, in the Office of the Spartanburg County Clerk of Court.
3. Defendants have been properly served with, or accepted service of, the Lis Pendens, Summons, and Complaint.



4. Defendants are in default as shown by Affidavit(s) on file herein.

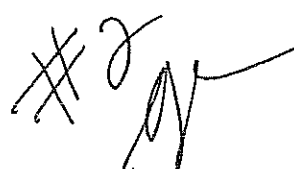
5. According to Affidavit filed herein, no Defendant in default is actively in the Military Service of the United States of America, as contemplated under the Servicemembers Civil Relief Act, U.S.C.A., Title 50, App. § 501, et seq., and any amendments thereto.

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 (as part of the Complaint) on all parties 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

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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 has been filed with the Court as an attachment to the Complaint and is of record herein.

11. Defendant has not filed a response to Plaintiff's Affidavit.

12. For value received, Defendant, Barbara Brannon (hereinafter "Debtor"), executed and delivered a promissory note (hereinafter "Note") to Plaintiff dated January 26, 2006, containing a promise to pay the principal sum of Seventy-Eight Thousand Two Hundred and 00/100 Dollars (\$78,200.00), with interest thereon and repayment terms as specified therein.

13. In order to secure the payment of said Note, Debtor, executed and delivered to Plaintiff a mortgage (hereinafter "Mortgage") of even date and identical amount, whereby there was conveyed unto Plaintiff by way of said Mortgage the property described as follows:

All that lot of land in the City of Spartanburg, Spartanburg County, South Carolina fronting on Fremont Avenue and shown as lot 28 on Plat of Victoria Gardens, Phase II by Graming Brothers Surveying, Inc. dated August 13, 2004, and recorded on as Instrument No. PLT-2004-10578 (Plat Book 155 Page 662) in the Office of the Register of Deeds for Spartanburg County, South Carolina. This property is more recently shown on plat of survey for Barbara Brannon by Gooch & Associates, P.A.-Surveyors dated December 5, 2005.

This is the same property conveyed to the Mortgagor by the Housing Authority of the City of Spartanburg by deed recorded this same day in the Office of the Register of Deeds for Spartanburg County, South Carolina.

14. Said Mortgage was recorded in Mortgage Book 3598 at Page 906 on January 27, 2006, in the Register of Deeds Office for Spartanburg County.

15. Debtor was the record owner of the subject real property as of the date the Lis Pendens was filed. Plaintiff is the lawful owner and holder of the Note and Mortgage. The Mortgage constitutes a first lien upon the subject property.

16. 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 reasonable attorneys fees, costs and expenses of enforcing the should the Note to be paid by Debtor.

17. Debtor has defaulted in payments, Plaintiff has sent Defendant a demand for payment, to which it received no response. Plaintiff has exercised its option to declare the entire outstanding indebtedness immediately due and payable.

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

19. Plaintiff is entitled to foreclose the Mortgage.

20. 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, 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, 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. Additionally, the Note specifically provides for reasonable attorney fees, costs and expenses of enforcing the Note to be paid by Debtor (see The Citizens and Southern National Bank of South Carolina v. Easton, 310 S.C. 458, 460-461, 426 S.E.2d 640 (1993)). In light of the above, the size of the mortgage debt, and Plaintiff's attorney's qualifications, Three Thousand One Hundred and 00/100 Dollars (\$3,100.00) 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 Four Hundred Thirty and no/100 Dollars (\$430.00).

21. 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 6.75%), and other costs and expenses of collection, exclusive of costs and attorney's fees, with a daily accrual rate of \$14.17 is as follows:

| | | |
|----|--------------------------|--------------------|
| a. | Principal Balance: | \$76,221.92 |
| b. | Interest Due: | \$3,583.48 |
| c. | Late Charges: | \$253.60 |
| | BALANCE DUE: | \$80,540.07 |
| | Attorney Fees: | \$3,100.00 |
| | Costs to Date: | \$430.00 |
| | TOTAL AMOUNT DUE: | \$84,070.07 |

22. The post-judgment interest rate shall be at the legal rate.

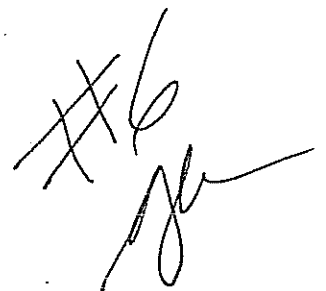
23. The anticipated balance due and owing by Debtor as of Sales Day April 5, 2010, shall be Eighty-One Thousand and Two Hundred Twenty and 23/100 Dollars (\$81,220.23) exclusive of costs and attorney's fees, with a daily accrual rate of \$14.17.

24. Plaintiff is seeking a deficiency judgment as to Debtor and is entitled to have any equity of redemption barred and to have the property sold at public auction on Legal Sales Day April 5, 2010 with the proceeds to be applied towards costs and expenses, attorney's fees, and the mortgage indebtedness.

25. Defendant(s) set out hereinafter have been joined as party defendants by virtue of the fact that said Defendants claim or may claim a lien or other interest in the property which is the subject of this foreclosure action and said lien or claim is subordinate to the first lien of the Plaintiff:

a. Spartanburg Housing Development is made a party to this action by virtue of that certain second mortgage executed by Debtor on January 26, 2006 and recorded on January 27, 2006 in Mortgage Book 3598, at Page 920, Spartanburg County records. A copy of the aforementioned Mortgage is attached to and made a part of this Complaint as "Exhibit F" and incorporated herein by reference, the same as if fully set forth in this Complaint.

26. In the event there are surplus funds after payment of Plaintiff's debts, the validity, priority, and amount of any lien or claim of the Defendant(s) set forth in the preceding paragraph will be determined at a hearing subsequent to the sale in accordance with Rule 71(c) of the South Carolina Rules of Civil Procedure.

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CONCLUSIONS OF LAW:

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

1. Plaintiff should have judgment of foreclosure of the Mortgage and the mortgaged property should be sold at public auction after due advertisement.

2. As of the date of hearing, there is due to Plaintiff, under the terms of the Note and Mortgage the sum of \$80,540.07, plus attorney's fees of \$3,100.00 and all costs and expenses of this action, which to date total \$430.00, with interest on said debt from the date of hearing through the date of compliance at the contract rate (currently 6.75%) and thereafter, in the event of a deficiency judgment, at the legal judgment rate.

3. 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.

4. 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.

5. The Master In Equity for Spartanburg County, South Carolina, after having duly advertised the mortgaged premises for 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 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 Court of Court 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 Court of Court 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 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:

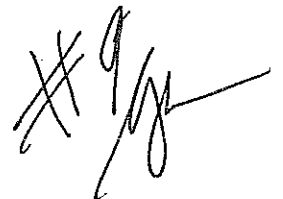
First, to the payment of all costs and expenses of this action, including a fee for the Plaintiff's attorneys as heretofore provided and any Guardian ad Litem fees or fees for attorneys appointed by the Court; next to the payment of the amount due upon the Note and Mortgage owned by Plaintiff; and finally, after disbursing the proceeds of the sale as aforesaid, that any balance thereafter remaining be held by the 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 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 on the deficiency sales date.

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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 Master In Equity's deed, as well as in the name of the 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 Debtor and Plaintiff shall have personal judgment against Debtor for the amount of said deficiency.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED:

That any prior lien that has been paid in full is hereby satisfied and cancelled of record.

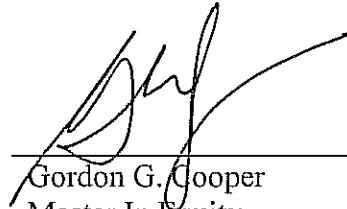
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED:

That pursuant to Section 29-3-650 of the Code of Laws of South Carolina, 1976, as amended, the Master In Equity is hereby directed to immediately enter judgment against Debtor in the amount of \$80,540.07 as of the date of hearing, plus court costs, court-awarded attorney's fees, any subsequent necessary advances and interest from the date of hearing through the date of compliance at the contract rate (currently 6.75%) and thereafter, in the event of any deficiency, at the legal rate, and docket said judgment in the Clerk's office in the same manner as any other judgment. Upon the sale of the

mortgaged premises, the Court shall credit upon the judgment the amount paid to the Plaintiff from the proceeds of the sale or, in the event the Plaintiff is the successful bidder, the amount of Plaintiff's bid.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED:

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



Gordon G. Cooper
Master In Equity

Spartanburg, South Carolina

Date: February 16, 2010

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