

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF SPARTANBURG )  
 )  
 NAFH National Bank, d/b/a First National )  
 Bank of the South, successor-in-interest to )  
 First National Bank of the South and to )  
 First National Bank of Spartanburg, )  
 Division of First National Bank of the )  
 South; )  
 )  
 Plaintiff; )  
 )  
 )  
 )  
 vs. )  
 )  
 David A. Cox; and Eric A. and Mary )  
 J. Eberius; )  
 )  
 )  
 Defendants. )  
 )  
 \_\_\_\_\_ )

IN THE CIRCUIT COURT  
 C/A NO. 2011-CP-42-2617

**MASTER-IN-EQUITY'S  
 ORDER AND FINAL  
 JUDGMENT OF  
 FORECLOSURE AND SALE  
 OF REAL PROPERTY**

**DEFICIENCY DEMANDED AS TO  
 DEFENDANT DAVID A. COX**

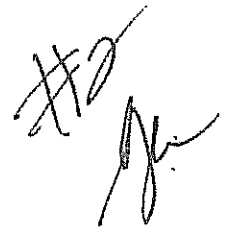
Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure (“SCRCP”), the above entitled matter was referred to the undersigned to make appropriate findings of fact and conclusions of law with authority to enter a final judgment in the case, and an appeal from the final judgment so entered to be made directly to the Supreme Court of South Carolina.

Pursuant to the said order of reference, a hearing was held, attended by the attorneys of record, testimony was taken, which is reported herewith, and from the testimony and evidence, I find and conclude as follows:

**FINDINGS OF FACT**

1. The Amended Lis Pendens was filed on June 21, 2011 in the Office of the Clerk of Court for Spartanburg County.
2. The Complaint and Summons to Answer the Complaint were filed on June 15, 2011 in the Office of the Clerk of Court for Spartanburg County.

3. Service of the Summons, Complaint and Amended Lis Pendens was made upon the Defendants, as shown by the Affidavit of Service, filed herein on June 27, 2011, and Affidavit of Publication Summons filed herein on September 16, 2011.
4. Affidavits of Default regarding the Defendants David A. Cox; and Eric A. and Mary J. Eberius were filed on November 18, 2011 by Daniel B. Lott, Jr., and according to said Affidavits, the Defendants David A. Cox; and Eric A. and Mary J. Eberius are not, upon information and belief, in the military service of the United States.
5. The Defendants were notified of the time, date and place of the hearing in this matter.
6. The real property which is the subject of this action is situated in the County of Spartanburg, State of South Carolina.
7. On or about October 31, 2008, the Defendant David A. Cox ("Mortgagor") made, executed and delivered to First National Bank of the South, or its order, his written Note, which represents a renewal of an earlier obligation, in an original principal sum of Eighty Thousand and 00/100 Dollars (\$80,000.00), together with interest on the outstanding principal balance thereof at the rate of Seven and 250/100 Percent (7.250%) per annum, said principal and interest payable in one quarterly installment of accrued interest on February 1, 2009, with all unpaid principal and accrued interest being due and payable, in full, on May 1, 2009 (the "Note"). A copy of the Note is attached to the Complaint as Exhibit "A", and incorporated herein, by reference.
8. In order to secure the payment of the Note, and the earlier obligation which the Note paid, by renewal, the Mortgagor did, on or about March 11, 2008, make, execute and deliver a Mortgage to First National Bank of Spartanburg, Division of First National Bank of the South, or its order, which mortgage was recorded in the Office of the

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Register of Deeds for Spartanburg County on March 14, 2008, where it appears in Mortgage Book 4053, at Page 972 (the "Mortgage"). A copy of the Mortgage is attached to the Complaint as Exhibit "B" and incorporated herein by reference. The real property covered by the Mortgage is described as:

PARCEL 1:

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, located on the west side of Redland Road, approximately one (1) mile northeast of Campobello, and being shown and designated as Tract A, containing 8.0 acres, more or less, on a plat prepared for Redland Road Corporation by Joe E. Mitchell, RLS, recorded in Deed Book 43-V, Page 423, Register of Deeds for Spartanburg County, South Carolina.

PARCEL 2:


ALSO: 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, located on the south side of Duke Power Company Line right-of-way and on the north side of an unnamed road about one (1) mile northeast of Campobello, and being shown and designated as Tract No. 15, containing 5.23 acres, more or less, on a plat prepared for Redland Road Corporation by Joe E. Mitchell, RLS, recorded in Plat Book 80 at Page 258, Register of Deeds for Spartanburg County, South Carolina.

PARCEL 3:

LESS: 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 shown and designated as Tract A, containing 5.002 acres, more or less, on a plat prepared for George Nelson and Charlton Nelson dated June 27, 2001 and recorded in Plat Book 150 at Page 600.

The above described property is subject to any and all easements and/or rights of way for roads, utilities, drainage, etc. as may appear of record and/or on the premises and to any and all restrictions, covenants or zoning ordinances affecting such property as may appear of record. The above described property is specifically subject to restrictions governing said property as appear in the Register of Deeds Office for Spartanburg County, South Carolina in Deed Book 43-7 at Page 670.

9. The real property covered by the Mortgage, as described above, together with all and

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singular the rights, members, hereditaments and appurtenances belonging or in any way incident or appertaining thereto; all improvements now or hereafter situated thereon; and all fixtures now or hereafter attached thereto; shall hereinafter be referred to as the "Mortgaged Premises".

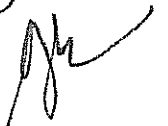
10. The Mortgage evidences and secures the repayment of money advanced by Plaintiff to, or on behalf of, Mortgagor, in the principal amount of the Note, plus interest, costs and expenses, and constitutes a first lien on the Mortgaged Premises.
11. In order to further secure the payment of the Note, the Mortgagor did, also on or about March 11, 2008, make, execute and deliver an Assignment of Leases and Rents ("Assignment") to First National Bank of Spartanburg, Division of First National Bank of the South, or its order, which Assignment was recorded in the Office of the Register of Deeds for Spartanburg County on March 14, 2008, where it appears in Deed Book 90-W, at Page 852. A copy of the Assignment is attached to the Complaint as Exhibit "C" and incorporated herein by reference.
12. Plaintiff is the holder and present owner of the Note, Mortgage, and Assignment, and is entitled to all the rights, privileges, and benefits thereof.
13. The Note and Mortgage which are the subject of this action are not owned, securitized, or guaranteed by either Federal National Mortgage Association (Fannie Mae) or Federal Home Loan Mortgage Corporation (Freddie Mac) and neither is subject to modification under the Homeowner Affordability and Stability Plan, the Home Affordable Modification Program (HMP) and United States Treasury Supplemental Directive 99-01. Plaintiff has not signed an agreement to participate in the Homeowner Affordability and Stability Plan, the Home Affordable Modification Program (HMP) or United States

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Treasury Supplemental Directive 99-01.

14. Payment due on the Note has not been made as provided therein, and the Plaintiff, as the holder thereof, has elected to accelerate payment of the entire amount due thereon and has placed the Note in the hands of the attorney herein for collection by foreclosure.
15. The sum of Four Thousand Five Hundred and No/100ths (\$4,500.00) 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 delaying conclusion beyond the normal time.
16. The Plaintiff has advanced the sum of Two Thousand Two Hundred Thirty-Eight and 22/100 Dollars (\$2,238.22) in payment of real property taxes due upon the Mortgaged Premises, which sum Plaintiff is entitled to add to the amount due upon the Note and secured by the Mortgage. Copies of the paid tax receipt and Plaintiff's check in payment thereof are attached to the Report of Hearing, collectively, as Exhibit "E", and are incorporated herein, by reference.
17. The amount due and owing on the Note, with interest at the rate provided therein, and other costs and expenses of the within action, including an attorney's fee, secured by the Note and the Mortgage is as follows:

(A) Principal Balance of Note:	\$ 79,565.00
(B) Accrued Interest on Note through January 5, 2012	\$ 15,351.96
(C) Appraisal Fees	\$ 600.00
(D) Real Property Taxes Paid for 2010	\$ 2,238.22

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(E)	Costs of Collection Prior To Hearing (service, filing, etc.)	\$ 1,172.85
	Title Search	\$ 130.00
	Service	\$ 757.85
	Filing Fees	\$ 185.00
	Master's Fee	\$ 100.00

(F) Attorney's Fees \$ 4,500.00

TOTAL DEBT secured by Note  
and Mortgage Including interest to  
date shown \$103,428.03

18. Interest for the period from the date shown in (B) above, at an interest rate equal to 7.250 percent per annum shall be added to the TOTAL DEBT or judgment debt to comprise the amount of Plaintiff's debt secured by the Note and Mortgage through the date to which such interest is computed.
19. Plaintiff specifically demands its right to a deficiency judgment against the Defendant David A. Cox for any deficiency left unpaid on the Note following a sale of the Mortgaged Premises in this action.
20. With approval of the Comptroller of the Currency, NAFH National Bank was merged with Capital Bank on June 30, 2011, with the surviving bank to be known as Capital Bank, National Association. The caption of this case should be revised so that the name of the Plaintiff reads: "Capital Bank, National Association, f/k/a NAFH National Bank, d/b/a First National Bank of the South, successor-in-interest to First National Bank of the South and to First National Bank of Spartanburg, Division of First National Bank of the South".

**CONCLUSIONS OF LAW**

I THEREFORE CONCLUDE AS FOLLOWS:

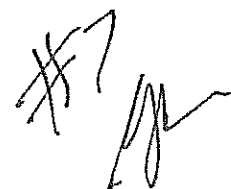
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21. The Plaintiff should have judgment of foreclosure of the Mortgage, and the Mortgaged Premises should be sold at public auction after due advertisement.
22. The Plaintiff should have a personal money judgment against the Defendant Mortgagor for any portion of the TOTAL DEBT left unpaid following the sale of the Mortgaged Premises.
23. The following Defendants have, or may claim, some interest in the Mortgaged Premises, but the interests of these Defendants, if any, is junior and subsequent to that of the Plaintiff:

(A) The Defendants Eric A. and Mary J. Eberius by virtue of that certain Contract for Deed dated March 28, 2008 and recorded March 28, 2008 in the Office of the Register of Deeds for Spartanburg County, where it appears in Deed Book 90-Z, at Page 441.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:**

24. That there is due to the Plaintiff on the Note and Mortgage, the sum of One Hundred Three Thousand Four Hundred Twenty-Eight and 03/100 (\$103,428.03) Dollars, representing the TOTAL DEBT due Plaintiff as set out in the Findings of Fact supra together with interest at the rate provided therein on the balance of principal from the date aforesaid above.
25. The TOTAL DEBT shall constitute the total judgment debt due the Plaintiff on the Note and the Mortgage and shall bear interest hereafter, until paid at the rate of 7.250 percent per annum.
26. That the Defendant Mortgagor is liable for the aforesaid TOTAL DEBT, and shall, on or before the date of sale of the Mortgaged Premises hereinafter described, pay to the

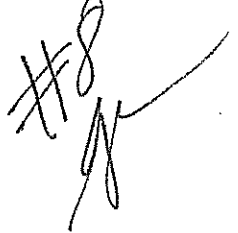


Plaintiff, or Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, together with the additional costs and disbursements of this action incurred hereafter and prior to the date of said payment.

27. That the caption is amended so that the Plaintiff's name is "Capital Bank, National Association, f/k/a NAFH National Bank, d/b/a First National Bank of the South, successor-in-interest to First National Bank of the South and to First National Bank of Spartanburg, Division of First National Bank of the South.

28. 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 Judicial Center, in the City of Spartanburg, County and State aforesaid, on some convenient salesday hereafter (and should the regular day of judicial sales fall on a legal holiday, then in such event, the salesday 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 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 Twenty (20) days from the close of the bidding, same to 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 7.250 percent per annum.
- (C) Because Plaintiff has demanded a deficiency judgment, the bidding will remain open for Thirty (30) days following the initial sales date, and the

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successful bidder will be required to comply with its bid as set forth above following the close of bidding.

(D) The sale shall be subject to taxes and assessments, existing easements and restrictions and easements and restrictions of record, and any other senior encumbrances.

(E) Purchaser to pay for the deed preparation and costs of recording the Deed and Deed Stamps.

29. If Plaintiff be the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of Plaintiff in full, Plaintiff may pay to the Master-in-Equity only the amount of the costs and expenses crediting the balance of the bid to the reduction of Plaintiff's indebtedness.

30. That the Master-in-Equity will, by advertisement according to law, give notice of the time, and place of such sale, and the terms thereof, and will execute to the purchaser, or purchasers, a deed to the Mortgaged 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 the close of bidding, then the Master-in-Equity may advertise the Mortgaged Premises for sale on the next, or some other subsequent salesday, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured.

31. The Master-in-Equity will apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of costs and expenses of this action.

NEXT: To the payment of the Plaintiff or Plaintiff's attorney, of the amount of Plaintiff's

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debt and interest or so much thereof as the purchase money will pay;

NEXT: Any surplus should be held pending further Order of this court.

32. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that in the event the successful bidder is other than the Defendants in possession herein, the Sheriff of Spartanburg County is ordered and directed to eject and remove from the Mortgaged Premises the occupant(s) of the property sold, and put the successful bidder or his assigns in full, quiet and peaceable possession of said Mortgaged Premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.
33. AND 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.
34. AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, pursuant to South Carolina Code Ann. §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 for Spartanburg County in the name of the owners of record of the 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.
35. The undersigned will retain jurisdiction to do all necessary acts incident to this foreclosure and set forth in the Order of Reference entered herein, including but not limited to, the issuance of a Writ of Assistance.
36. The following is a description of the Mortgaged Premises herein ordered to be sold:

PARCEL 1:



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, located on the west side of Redland Road, approximately one (1) mile northeast of Campobello, and being shown and designated as Tract A, containing 8.0 acres, more or less, on a plat prepared for Redland Road Corporation by Joe E. Mitchell, RLS, recorded in Deed Book 43-V, Page 423, Register of Deeds for Spartanburg County, South Carolina.

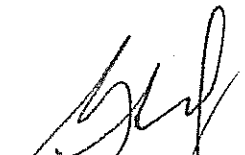
PARCEL 2:

ALSO: 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, located on the south side of Duke Power Company Line right-of-way and on the north side of an unnamed road about one (1) mile northeast of Campobello, and being shown and designated as Tract No. 15, containing 5.23 acres, more or less, on a plat prepared for Redland Road Corporation by Joe E. Mitchell, RLS, recorded in Plat Book 80 at Page 258, Register of Deeds for Spartanburg County, South Carolina.

LESS: 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 shown and designated as Tract A, containing 5.002 acres, more or less, on a plat prepared for George Nelson and Charlton Nelson dated June 27, 2001 and recorded in Plat Book 150 at Page 600.

The above described property is subject to any and all easements and/or rights of way for roads, utilities, drainage, etc. as may appear of record and/or on the premises and to any and all restrictions, covenants or zoning ordinances affecting such property as may appear of record. The above described property is specifically subject to restrictions governing said property as appear in the Register of Deeds Office for Spartanburg County, South Carolina in Deed Book 43-7 at Page 670.

37. Plaintiff shall be awarded judgment against the Defendant David A. Cox for any deficiency.

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

This 5<sup>th</sup> day of January, 2012  
Spartanburg, South Carolina  
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