

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 The Palmetto Bank,)
)
 Plaintiff,)
)
 -vs-)
)
 RJFII Corporation, J. Robert Flynn, II, First)
 Citizens Bank and Trust Company, Inc.,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 C.A. NO. 2009-CP-42-4546

**Master's Order and Judgment of
 Foreclosure and Sale**
**(Deficiency as to RJF II Corporation, J.
 Robert Flynn, II)**
**(Non-eligible under the Home Affordable
 Modification Program)**

FILED
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 SPARTANBURG COUNTY
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 MARCO KITCHENS

This matter came before the undersigned as Master in Equity for Spartanburg County, South Carolina, for a hearing on November 12, 2009, attended by M. Kevin McCarrell of Smith Moore Leatherwood LLP, attorneys for Plaintiff. The matter was referred to me for the purposes of taking the testimony and issuing a final decree with any appeal therefrom to be directly to the South Carolina Court of Appeals.

FINDINGS OF FACT

1. I find that this action was duly and properly instituted by the filing of the Amended Summons and Amended Complaint on August 26, 2009, and the service of the Amended Summons and Amended Complaint upon each Defendant as shown by the proofs of service heretofore filed.
2. I find that the Amended Lis Pendens was duly and properly filed in the Office of the Clerk of Court of Spartanburg County on August 26, 2009.
3. It appears that Defendants RJF II Corporation ("RJFII") and J. Robert Flynn, II ("Flynn") are in default as shown by the affidavit filed herein. It further appears that Defendant First Citizens Bank and Trust Company, Inc., ("First Citizens") timely filed an Answer.
4. I find that notice of the time and place of this hearing has been duly given to each Defendant.



5. I find that this action was instituted by Plaintiff for the purpose of foreclosing the Mortgage given to it by Defendant RJFII.

6. For value received, Defendant RJFII made, executed and delivered to Plaintiff a Promissory Note dated on or about August 24, 2007, in the amount of \$1,000,000.00, with interest thereon as set forth in the Note. Other terms and conditions are stated in the Note which is of record herein.

7. In order to secure the payment of the Note described herein, Defendant RJFII made, executed and delivered to Plaintiff a Mortgage, in writing, dated August 24, 2007, covering real property in Spartanburg County, South Carolina, including the property described in the Amended Complaint (the "Mortgaged Property"). The Mortgage was duly recorded on August 27, 2009, in the Register of Deeds Office for Spartanburg County in Book 3953 at Page 894.

8. For valuable consideration, Plaintiff executed various Partial Releases of Mortgage Liens to Defendant RJF II, thereby releasing its lien on the various lots as described below:

<u>Date Executed</u>	<u>Date Recorded</u>	<u>Book</u>	<u>Page</u>	<u>Lot</u>
April 30, 2008	May 8, 2008	4081	981	36
April 30, 2008	May 8, 2008	4081	980	37
May 13, 2008	May 21, 2008	4087	695	38
May 13, 2008	May 21, 2008	4087	694	39

9. As further security for the repayment of the Note, Defendant Flynn executed and delivered to Plaintiff his personal Guaranty, dated August 24, 2007, thereby unconditionally guaranteeing payment of the indebtedness due from Defendant RJFII.

10. It appears that Defendants RJFII and Flynn failed to make the payments as called for under the Note, and, as a result, Plaintiff exercised its option to declare the entire unpaid

balance due and payable and has placed the Note and Mortgage in the hands of an attorney for collection.

11. I find that the Note and Mortgage provide that in the event this matter is referred to an attorney for collection, the maker would pay all costs of collection including reasonable attorneys' fees. The sum of \$5,500.00 is a reasonable fee to allow as attorneys' fees to Plaintiff's attorneys for the services performed and anticipate to be performed until final adjudication of the within action, under the terms of the Note and Mortgage. In making this award, I have considered the time, effort, difficulty and results obtained by Plaintiff's attorneys, as well as their professional standing and the usual fee awarded in Spartanburg County in similar matters. I find that the record and evidence fully substantiates such a fee. The services anticipated to be performed until final adjudication contemplate completion of this matter within a reasonable time and do not include exceptional circumstances delaying conclusion beyond the normal time.

12. The amount due and owing on the Note, with interest at the rate provided in the Note, and all other costs and expenses of collection, including an attorneys' fees, secured by the Note and Mortgage, is as follows:

Principal	\$918,028.08
Interest accrued as of 11/12/09	\$ 51,361.64
Late fees	\$ 2,881.81
Cost of collection	\$ 325.00
Attorneys' fees	<u>\$ 5,500.00</u>
TOTAL	\$978,096.53

13. Subsequent to November 12, 2009, interest at the Note rate of 6.0% should be added to such judgment debt in order to comprise the amount of Plaintiff's debt secured by the Mortgage to the date to which such interest is computed.

14. I find that Plaintiff's Mortgage is a first lien on the Mortgaged Property.

15. Defendant First Citizens is made a party to this action by reason of a Foreclosure



Decree in which in which First Citizens was granted a deficiency judgment against both parties pending sale of the property, filed on June 9, 2009 in Spartanburg County in the Clerk of Court's Office in Judgment Roll 2009-CP-42-1337. I find that this judgment is junior and subordinate to and inferior to the lien of the Plaintiff's Mortgage.

16. I find that Plaintiff is seeking foreclosure of the Mortgage and is also seeking a personal or deficiency judgment against Defendants RJF II and Flynn, jointly and severally.

17. I find that The Note and Mortgage involve a business debt and are not eligible to participate in the Home Affordable Modification Program ("HMP"). I find that the Note and Mortgage are not subject to modification under the 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 matter identified as *RE: Mortgage Foreclosures and the Home Affordable Modification Program (HMP)*.

18. I also find that Plaintiff has complied with Justice Toal's Order by including the allegation in its duly signed Amended Complaint that the Note and Mortgage are not subject to Justice Toal's Order.

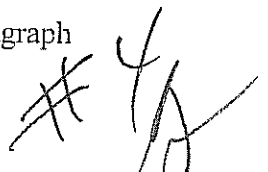
CONCLUSIONS OF LAW

I therefore conclude that Plaintiff should have judgment of foreclosure of its Mortgage and the Mortgaged Property should be ordered sold at public auction after due advertisement.

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

1. There is due to Plaintiff on the obligation and Mortgage set forth in the Amended Complaint the sum of \$978,096.53 representing the total debt due Plaintiff as set out in paragraph 11, supra, together with interest at the rate provided therein until the date of compliance with the sale.

2. The amount due in the preceding paragraph (see total debt as set forth in paragraph



11, supra), and later accrued interest and costs shall constitute the total judgment debt due Plaintiff and shall bear interest hereafter at the Note rate of 6.0 % per annum (\$160.78 per day).

3. Defendants RJFII and Flynn whom are liable for the aforesaid Mortgage debt shall, on or before the date of sale of the Mortgaged Property hereinafter described, pay to Plaintiff, or to 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 sale of the property, the Mortgaged Property described in the Amended Complaint as hereinafter set forth, shall be sold by me, as Master, at public auction, at the Spartanburg County Courthouse, in the City of Spartanburg, County and State aforesaid, on **December 7, 2009**, or on some convenient sales date hereafter (and should the regular day of judicial sales fall on a holiday, then and in such event, the sales date shall be on the Tuesday next succeeding such holiday) on the following terms, that is to say:

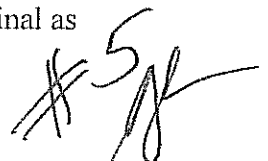
a) For cash -- I, as Master, shall require at the time of bid a deposit of five percent (5%) of the amount of the bid (in cash or equivalent), the same to be applied on the purchase price only upon compliance with the bid, but in case of noncompliance within twenty (20) days, the same is to be forfeited and applied to the costs and then to Plaintiff's debt.

b) The sale shall be subject to taxes, assessments, easements, and restrictions.

c) Purchaser is to pay for deed stamps and the cost of recording the deed and for interest on the debt from November 12, 2009, through the date of compliance.

5. If Plaintiff is the successful bidder at the said sale, for a sum not exceeding the amount of costs, disbursements, expenses and the indebtedness of Plaintiff in full, Plaintiff may pay to me, as Master, only the amount of the costs, disbursements, and expenses, crediting the balance of the bid on Plaintiff's indebtedness.

6. Because a personal deficiency judgment has been sought, the sale will not be final as

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of the close of bidding on sales day but will remain open for 30 days for upset bids. Plaintiff reserves the right to waive its right to a deficiency, which deficiency waiver may be made in writing prior to the sale.

7. I, as Master, 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 Mortgaged Property sold. Plaintiff, or any other party to this action, may become a purchaser at such sale, and if, upon such sale being made, the purchaser or purchasers should fail to comply with the terms thereof within twenty (20) days after the date of sale, I, as Master, shall readvertise the said Mortgaged Property for sale on the next or some other subsequent sales date, at the risk of the former highest bidder, and the Mortgaged Property shall be sold from time to time thereafter until compliance shall be secured.

8. I, as Master, shall apply the proceeds of the sale as follows: first, to the payment of the amount of the costs and expenses of this action; next to the payment to Plaintiff or to 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.

9. Any surplus will be held pending the further order of this Court.

10. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that in the event the successful bidder is other than 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 to put the successful bidder or its assigns in full, quiet and peaceful possession of the premises without delay and to keep the said successful bidder or its assigns in such peaceful possession.

11. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each Defendant named herein and all persons whomsoever claiming under them, be forever barred and foreclosed of

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all right, title and interest and equity of redemption in the same mortgaged premises so sold, or any part thereof.

12. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to S.C. Code § 30-9-31, the deed of conveyance pursuant to this sale shall be indexed in the grantor index by the Register of Deeds Office in the name of the owners of record of the subject property immediately prior to the execution of the deed, as well as in the name of the Master in Equity as grantor.

13. This Court will retain jurisdiction to do all necessary acts incident to this foreclosure, including, but not limited to, the issuance of a writ of assistance in disposing of any surplus funds pursuant to Rule 71(c), SCRPC.

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

All that certain piece, parcel or lot of land, situate, lying and being in the State of South Carolina, County of Spartanburg, being shown and designated as containing 20.13 acres, more or less, as shown on a boundary survey prepared for Robert Flynn dated November 15, 2007 and recorded in Plat Book 161, Page 537, RMC Office of Spartanburg County, S.C. For a more complete and particular description, reference is hereby made to the above referred to plat and record thereof.

LESS, all that certain piece, parcel or lot of land, situate; lying and being in the State of South Carolina, County of Spartanburg, being shown and designated as Lot Nos. 36, as shown on survey of *The Flats at Fairview, Section I*, prepared by Gramling Brothers Surveying, Inc., dated August 24, 2007 and recorded in Plat Book 162, Page 847, RMC Office for Spartanburg County, S.C. For more complete and particular description, reference is hereby made to the above referred to plat and record thereof.

LESS, all that certain piece, parcel or lot of land, situate, lying and being in the State of South Carolina, County of Spartanburg, being shown and designated as Lot Nos. 37, as shown on survey of *The Flats at Fairview, Section I*, prepared by Gramling Brothers Surveying, Inc., dated August 24, 2007 and recorded in Plat Book 162, Page 847, RMC Office for Spartanburg County, S.C. For more complete and particular description, reference is hereby made to the above referred to plat and record thereof.

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LESS, all that certain piece, parcel or lot of land, situate, lying and being in the State of South Carolina, County of Spartanburg, being shown and designated as Lot Nos. 38, as shown on survey of *The Flats at Fairview, Section I*, prepared by Gramling Brothers Surveying, Inc., dated August 24, 2007 and recorded in Plat Book 162, Page 847, RMC Office for Spartanburg County, S.C. For more complete and particular description, reference is hereby made to the above referred to plat and record thereof.

LESS, all that certain piece, parcel or lot of land, situate, lying and being in the State of South Carolina, County of Spartanburg, being shown and designated as Lot Nos. 39, as shown on survey of *The Flats at Fairview, Section I*, prepared by Gramling Brothers Surveying, Inc., dated August 24, 2007 and recorded in Plat Book 162, Page 847, RMC Office for Spartanburg County, S.C. For more complete and particular description, reference is hereby made to the above referred to plat and record thereof.

TMS #2-45-00-029.00

15. 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.

AND IT IS SO ORDERED.



Gordon G. Cooper
Master in Equity for Spartanburg County

Dated: November 12, 2009

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