

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
C/A No. 2009-CP-42-3728

U. S. Bank National Association ND,
Plaintiff,

v.

Otis Jones and The South Carolina
Department of Revenue,
Defendants.

MASTER IN EQUITY'S
JUDGMENT OF FORECLOSURE
AND SALE

(Deficiency Waived)

FILED
2009 SEP 30 AM 11:17
MARCO MITCHELL

(910.090108)

Pearce W. Fleming
D. Randolph Whitt
FLEMING & WHITT, P. A.
Attorneys for Plaintiff

Milton G. Kimpson
Attorney for The South Carolina Department of
Revenue

Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, this matter was referred to the undersigned by an Order of Reference previously filed in this matter.

A hearing was held on September 30, 2009, at Spartanburg County Courthouse, 180 Magnolia Street, Spartanburg, SC. The testimony was taken, and from the testimony and evidence, I find and conclude as follows:

FINDINGS OF FACT:

1. The Lis Pendens was filed on July 2, 2009.
2. The Summons and Complaint were filed on July 2, 2009.
3. Service was made upon the Defendants as shown by the proofs of service filed herein.
4. The Defendant Otis Jones is in default as shown by affidavit or order filed herein.
5. The Defendants and all attorneys of record were notified of the time, date, and place of the hearing in this matter.

6. According to the affidavit filed herein, no individual Defendants in default are in the military service of the United States of America, as contemplated under the Service Members Civil Relief Act of 2004, and any amendments thereto.

7. For value received, Otis Jones made, executed and delivered a note ("Note") dated April 11, 2007, promising thereby to pay to the order of U. S. Bank National Association ND the sum of \$95,400.00, with interest at the rate of 8.700% per annum. Other terms and conditions are stated in the Note, which is of record herein.

8. To better secure the payment of the Note described above, Otis Jones made, executed, and delivered to U. S. Bank National Association ND a certain real estate mortgage ("Mortgage") in writing, dated April 11, 2007, covering real property in Spartanburg County, which is the same as that described in the Complaint. The Mortgage was filed in the Office of the Register of Deeds for Spartanburg County on April 17, 2007, in Book 3871 at Page 923.

9. The Mortgage evidences and secures the repayment of money advanced by the mortgagee to, or on behalf of, the mortgagor(s) and constitutes a first mortgage lien on the mortgaged premises, subject only to ad valorem or other liens/taxes given priority by statute.

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

11. The titleholder of record of the subject property as of the filing of the Lis Pendens in this action is Otis Jones, who is the original mortgagor.

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

13. Payment due on the Note has not been made as provided for therein, and the Plaintiff, as the holder thereof, has elected to require immediate payment of the entire amount due thereon and has placed the Note and Mortgage in the hands of its attorney for collection by foreclosure.

14. The sum of \$5,000.00 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 this action, under the terms of the Note and Mortgage. The sum of \$699.00 (including the amount of \$100.00 paid to the Master in Equity) is reasonable for the costs incurred. These sums are likewise reasonable based on the time necessarily devoted to representation of the Plaintiff

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during the several month course of these proceedings. The services of counsel performed for the Plaintiff, including the number and types of pleadings and documents prepared, the inherent liabilities, and the difficulties involved in this particular case also support the amount awarded. The fees are also reasonable given the professional standing of the 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. Moreover, the efforts of Plaintiff's counsel have had the beneficial result of a prompt foreclosure of the Mortgage. The inclusion of 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.

15. 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 an attorney's fee, secured by the Note and Mortgage, is as follows:

(a) Principal amount due as of September 30, 2009	\$93,909.51
(b) Interest from September 16, 2008 to September 30, 2009	\$9,231.45
(c) Advances	
Property Inspections, BPOs, Appraisals	\$95.00
Property Taxes	\$1,094.73
(d) Late charges	\$435.43
(e) Other charges	
Hazard Insurance	\$1,920.00
(f) Costs of collection prior to hearing (service of process, filing fees, etc.	\$699.00
(g) Attorneys Fee	\$5,000.00
Total debt secured by Note and Mortgage, including interest to date shown	\$112,385.12

The amount due (shown above) shall accrue interest at the rate of 8.700% per annum and together with such interest shall constitute the total debt due the Plaintiff, pursuant to S.C. Code §29-3-630.

16. Plaintiff is seeking the usual foreclosure of the Mortgage hereby, and its right to a deficiency judgment is waived, pursuant to S. C. Code Ann. §29-3-660 (1976).

17. The following Defendant(s) claim(s) or may claim a lien upon or interest in the subject property and in the event there is a surplus from the sale of the subject property, such Defendant(s) may present any such lien claim at a hearing subsequent to the sale, in

accordance with Rule 71(c) South Carolina Rules of Civil Procedure. The said Defendant(s) and such claims or liens are as follows:

a. The South Carolina Department of Revenue by virtue of any lien(s) of record, including, but not limited to, a Tax Lien or Warrant for Distraint against Otis Jones, PO Box 2271, Spartanburg, SC 29304-2271, Tax Lien/Warrant No. 3-50920123-1, File/Identifying No. 76523065, in the amount of \$448.14, and recorded May 21, 2008, in Book S-44 at Page 657.

18. U.S. Bank National Association ND has executed an agreement under the HAMP, however, the property that is the subject of this action is not the primary residence of the homeowner, and therefore, the loan is not eligible for modification under the HAMP.

19. Therefore, the stay imposed by the Order of the South Carolina Supreme Court entered on May 22, 2009 is lifted as to the loan that is the subject of this action, and consequently, lifted as to the property that is the subject of this action.

20. Pursuant to the terms of the Administrative Order of the South Carolina Supreme Court entered on May 22, 2009, the Plaintiff's Affidavit re: HMP and Loan Ownership/Guarantee and the Administrative Order of the South Carolina Supreme Court entered on May 22, 2009 was served on all parties, Federal National Mortgage Association and Federal Home Loan Mortgage Corporation on September 29, 2009.

21. The Administrative Order of the South Carolina Supreme Court entered on May 22, 2009, extended the time for filing a counter Affidavit to ten (10) days from the date of service, which will expire on October 9, 2009.

IT IS THEREFORE ORDERED:

(1) The stay imposed by the Administrative Order of the South Carolina Supreme Court entered on May 22, 2009 is lifted as to the loan that is the subject of this action, and consequently, lifted as to the property that is the subject of this action.

(2) The Mortgage constitutes a first mortgage lien on the mortgaged premises, subject only to ad valorem or other liens/taxes given priority by statute.

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(3) The Defendants named herein, and all persons whosoever claiming under Defendants, are forever barred and foreclosed of all right, title, interest, equity of redemption or lien in the said mortgaged premises so sold, or any part thereof.

(4) There is due to the Plaintiff on the Note and Mortgage set forth in the Complaint the sum of \$112,385.12, as set out in the Findings of Fact *supra*.

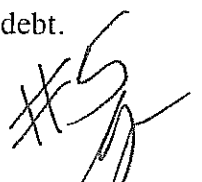
(5) The amount due in the preceding paragraph (the "Total Debt" as set out in the Findings of Fact *supra*) shall accrue interest at the rate of 8.700% per annum and together with such interest shall constitute the total debt due the Plaintiff, pursuant to §29-3-630.

(6) The amount due shall be subject to increase to permit the Plaintiff to recover additional costs, commissions and expenses. It may also increase to include supplemental compensation for attorney's services not contemplated by the initial fee award. Jurisdiction over the fee award and total debt is reserved to facilitate the assessment and payment of any such costs and/or supplemental compensation. Such additional costs, commissions and expenses may be established by affidavit and shall be adjudicated by the court without further hearing.

(7) The Defendants liable for the aforesaid debt including interest at the rate of 8.700% per annum 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.

(8) On default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, as hereinafter set forth, shall be sold by the Master in Equity (or the designee of the Master in Equity) at public auction, at Spartanburg County Courthouse, 180 Magnolia Street, Spartanburg, SC, Spartanburg County, 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 some other day appointed by the Court), on the following terms, that is to say:

(9) For cash: The Master in Equity will require, at the time of the bid, a deposit of 5% on the amount of the bid (in cash or equivalent) same to be applied to purchase price if compliance is made, but in the event compliance is not made, the deposit may be forfeited without further hearing and applied first to costs of the action and then to plaintiff's debt.



Should the successful bidder at the regularly conducted sale fail or refuse to make the required deposit at time of bid or comply with the other terms of the bid within twenty (20) days, then the property may be re-sold on the same terms and conditions on some subsequent Sales Day, but at the risk of the defaulting bidder(s).

(10) Interest on the balance of the bid shall be paid through the day of compliance at the rate of 8.700%.

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

(12) Purchaser to pay for any statutory commission on sale from the proceeds of sale, deed preparation, costs of recording the deed, and deed stamps.

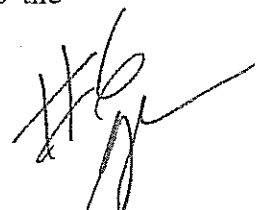
(13) This property may be subject to rights granted to a tenant pursuant to the Protecting Tenants at Foreclosure Act of 2009, Public Law 111-22, effective date May 20, 2009.

(14) A personal or deficiency judgment having been waived, the bidding will not remain open after the date of sale and compliance with the bid may be made immediately.

(15) 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 premises sold. The 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 conclusion of the bidding, then the 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.

(16) In the event an agent of the Plaintiff does not appear at the time of sale, the within property shall be withdrawn from sale and sold at the next available sales day upon the 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.

(17) If Plaintiff is the successful bidder at the sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of Plaintiff in full, Plaintiff may pay to the

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Master in Equity only the amount of the costs and expenses crediting the balance of the bid on Plaintiff's indebtedness.

(18) 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 (including attorney fees) or so much thereof as the purchase money will pay on the same;

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

(19) In the event the successful bidder is other than the Defendant(s) in possession herein, the Sheriff of Spartanburg County is 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.

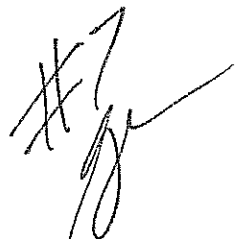
(20) The deed of conveyance made pursuant to said sale shall contain the names of only the first-named Plaintiff and the first-named Defendants, , and the Defendants who were the owner of the mortgaged property at the time of the filing of the notice of pendency of the within action, and the name of the grantee; and the Register of Deeds/Clerk of Court is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

(21) 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.

(22) The following is a description of the premises herein ordered to be sold:

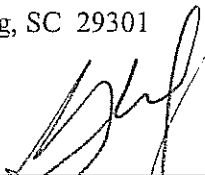
All that lot or parcel of land in the City of Spartanburg, County of Spartanburg, State of South Carolina, being known and designated as Lot No. 16, Block 5, Section 2, Sheffield Subdivision, as shown on plat recorded in Plat Book 62 at Pages 28 through 35, Register of Deeds for Spartanburg County, South Carolina. Also shown on a plat entitled "Closing Plat for Anthony Renna" prepared by Neil R. Phillips & Company, Inc., dated February 10, 1997, and recorded February 19, 1997, in Plat Book 136 at Page 796.

TMS No. 6 21-09 076.00

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This being the same property conveyed to Otis Jones by deed of Gerald R. Glur Real Estate, Inc., dated March 17, 2005, and recorded March 22, 2005, in Deed Book 82-Q at Page 205.

Property Address: 209 Seven Oaks Lane, Spartanburg, SC 29301



Gordon G. Cooper
Master in Equity, Spartanburg County

September 30, 2009
Spartanburg, South Carolina

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