

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF SPARTANBURG )  
 )  
 Community South Bank and Trust, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Webster Shane Thompson, a/k/a Shane )  
 Thompson, a/k/a Webster S. Thompson, )  
 Thompson Grading, Inc., and )  
 Flint Equipment Company, )  
 )  
 Defendants. )  
 )

IN THE COURT OF COMMON PLEAS

C.A. No. 2009-CP-42-05017

**DECREE OF FORECLOSURE**  
**(Deficiency Sought against Defendants)**

2010 APR 11 PM 1:03  
 HARC KITCHENS

Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, and upon the stipulation and agreement of all parties hereto not in default, 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 January 11, 2009. Plaintiff was represented by the law firm of Roe Cassidy Coates & Price, P.A., D. Sean Faulkner appearing. No appearances were entered for the Defendants. 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 Lis Pendens was filed on September 11, 2009, in the Office of the Spartanburg County Clerk of Court.

2. The Summons and Complaint were filed on September 11, 2009, in the Office of the Spartanburg County Clerk of Court.

3. Defendants have been properly served with, or accepted service of, the Civil Action Coversheet, Amended and Refiled Lis Pendens, Certificate of Exemption from ADR, Summons for Relief, and Foreclosure Complaint.

4. All 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. For value received, Thompson Grading, Inc. (hereinafter sometimes referred to as "Debtor") and/or Webster Shane Thompson a/k/a Shane Thompson a/k/a Webster S. Thompson (hereinafter sometimes referred to as "Mortgagor") executed and delivered the following promissory notes to CommunitySouth Bank and Trust (sometimes hereinafter referred to as the "Bank"):

- i. Note dated June 21, 2006, in the amount of One Hundred Thirty Seven Thousand and 00/100 Dollars (\$137,000.00) bearing loan number 8000640;
- ii. Note dated October 5, 2007, in the amount of One Hundred Fifty Three Thousand and 00/100 Dollars (\$153,000.00) bearing Loan Number 8001343;
- iii. Renewal Note dated December 4, 2008, in the amount of Two Hundred Thousand and 00/100 Dollars (\$200,000.00) bearing Loan Number 7000327;
- iv. Note dated January 11, 2005, in the amount of Three Hundred Fifty Seven Thousand and 00/100 Dollars (\$357,000.00) bearing Loan Number 1581377;

- v. Renewal Note dated November 7, 2007, in the amount of One Hundred Ninety Thousand Two Hundred Fifty Nine and 34/100 Dollars (\$190,259.34) bearing loan number 8000710;
- vi. Note dated July 23, 2007, in the amount of Seventy Six Thousand Nine Hundred Ninety Five and 00/100 Dollars (\$76,995.00) bearing Loan Number 8001243;
- vii. Note dated January 3, 2005, in the amount of One Hundred Fifty Two Thousand and 00/100 Dollars (\$152,000.00) bearing Loan Number 48804;
- viii. Note dated February 28, 2006, in the amount of Five Hundred Sixty Eight Thousand Five Hundred and 00/100 Dollars (\$568,500.00);
- ix. Note dated February 28, 2006, in the amount of One Hundred Forty Thousand and 00/100 Dollars (\$140,000.00) bearing Loan Number 8000468; and
- x. Note dated July 23, 2007, in the amount of Eight Hundred Eighty Nine Thousand Three Hundred Twenty Six and 35/100 Dollars (\$889,326.35).

The promissory notes and renewal promissory notes set forth hereinabove are hereinafter referred to individually as the "Note" and collectively as the "Notes."

9. The Debtor and/or Mortgagor and the Bank entered into that certain Forbearance Agreement dated March 31, 2009, as amended by that certain Addendum Letter dated May 13, 2009, (the "Forbearance Agreement") whereby the Debtor and/or Mortgagor acknowledged defaults existed under the Notes and Debtor and/or Mortgagor agreed to make certain payments to the Bank in return for the Bank's agreement to forbear the exercise of its rights under the Notes and the documents securing the same.

10. The Notes executed by Debtor and/or Mortgagor have been cross collateralized with each other and are secured by the same collateral and a default under any Note or the documents securing same is deemed to be a default in the other Notes.

11. Two mortgages secure the Notes. Debtor and Mortgagor executed and delivered to Bank a mortgage (hereinafter "Mortgage 1") dated January 11, 2005, in the amount of Three Hundred Fifty Seven Thousand and 00/100 Dollars (\$357,000.00) whereby there was conveyed unto Bank by way of said Mortgage 1 the property described as follows:

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 8/00 acres, more or less, as shown on survey prepared for V & T Construction Co. dated May 12, 1998 and recorded in Plat Book 141, Page 351, RMC Office for Spartanburg County, S.C. For a more complete and particular description, reference is hereby made to the above referred to plat and record thereof.

This being the same property conveyed to Joe Edd Vaughn and Shane Thompson by deed of Joseph W. Hudson dated May 20, 1998 and recorded in Deed Book 67-W, Page 984, RMC Office for Spartanburg County, S.C. Also, reference is hereby made to deed by Joe Edd Vaughn conveying all his interest to Shane Thompson, a/k/a Webster S. Thompson, dated January 11, 2005 and to be recorded herewith the RMC Office for Spartanburg County, S.C.

The above described property is conveyed subject to the Restrictive Covenants as recorded in Deed Book 67-W, Page 984, RMC Office for Spartanburg County, S.C.

Tax Map No. 4-41-00-071.01

Said Mortgage 1 was recorded in Mortgage Book 3371 at Page 17 on January 13, 2005, in the Register of Deeds Office for Spartanburg County. A copy of the aforementioned Mortgage is attached to and made a part of the Complaint as "Exhibit M" and is incorporated herein by reference, the same as if fully set forth in this affidavit. Also, Debtor and Mortgagor executed and delivered to Bank a mortgage (hereinafter "Mortgage 2") dated April 3, 2009, in the amount of One Million Eight Hundred Fifteen Thousand Seven Hundred Eighty and 27/100 Dollars (\$1,815,780.27) whereby there was conveyed unto Bank by way of said Mortgage 2 the property described as follows:

TRACT ONE: All that certain piece, parcel or lot of land, situate, lying and being in the State and County aforesaid, to Hobbysville School District, containing One Hundred Twenty-eight (128) acres, more or less, and more particularly described as follows: Beginning at a stone (O.M.) on the Spring branch, Roy Hall's corner, and running thence Northeastwardly along and with said Spring branch to an iron pin where said Spring branch now enters Moores Creek (the said Spring branch having been deflected and no longer flowing into James Creek as

formerly); thence up and with Moores Creek in a Southernly and Southwestwardly direction to a stake on the line of the Hill land; thence South 80-1/2 East 8.75 chains to stone, Roy Hall's corner; thence with Roy Hall's line North 0 deg. 45 minutes East crowing road 38.05 chains to the beginning corner. Said land bounded now or formerly on the North by J.T. Turner; on the East by Moores Creek and L.B. Griffin; on the South by the Hill land, and on the West by Roy Hall. The said land being all of Tracts Nos. 4 and 5 as shown on copy of plat dated October 14, 1921, prepared by Paul H. Anderson, Civil Engineer, recorded in Plat Book 19, at page 479, R.M.C. Office for Spartanburg County, except, however, approximately eight (8) acres, more or less, that lies Northwest of the present line of the Spring branch which was conveyed by Dora Lesley to J.H. Turner on July 16, 1947, recorded in the R.M.C. Office for Spartanburg County in Deed Book 14-B, page 58. Being a part of the property conveyed to Ronald Chad Thompson by deed of Henry F. Hall a/k/a Henry Franklin Hall and Barbara Ann J. Hall dated October 1, 1993, and recorded October 1, 1993, in Deed Book 60-N, Page 723, said RMC Office.

Tax Map Reference No.: 4-43-00 035.01

TRACT TWO: All that piece, parcel or tract of land being and situate on the Southern side of the Cross Anchor to Walnut Grove Road (Highway S42-113) Spartanburg County, S.C., School District 4, and being shown to contain 1.54 acres of land on plat of survey for Henry Franklin Hall dated February 21, 1986, by Joe E. Mitchell, RLS, and which plat is to be recorded forthwith and according to said plat said 1.54 acres hereby conveyed is bounded on the South and West by other property of grantors herein and also on the West by Highway S42-113 and on the North by property now or formerly of George W. Owens Estate and branch and on the East by other property of grantee herein; and being a part of the property conveyed to Ronald Chad Thompson by deed of Henry F. Hall a/k/a Henry Franklin Hall and Barbara Ann J. Hall dated and recorded October 1, 1993, in Deed Book 60-N, Page 723, said RMC Office.

Tax Map Reference No.: 4-43-00-032.03

TRACT THREE: All that piece, parcel or lot of land, being triangular in shape being, lying and situate in the old Hobbysville School District, near Enoree, approximately 528.96 feet from center of Stewart Road, and being shown to contain 1.47 acres on plat of survey for Ronald Chad Thompson dated May 16, 1995, by Joe E. Mitchell, RLS; and which plat is to be recorded forthwith; and being bounded on the North and East by other property of Ronald Chad Thompson, on the South by Henry Franklin Hall. For a more particular description specific reference is hereby made to the above mentioned plat. Being a part of the property conveyed to grantor

herein by deed of Roy A. Hall and Viola P. Hall dated May 20, 1991, recorded in Deed Book 57-T, Page 158, RMC Office for Spartanburg County, S.C. For a more particular description specific reference is hereby made to the above mentioned plat.

Tax Map Reference No.: p/o 4-43-00-32.00

LESS AND EXCEPTED: All those pieces, parcels or lots of land containing a total of 2.68 acres, more or less, as shown on plat recorded in Plat Book 128, Page 533, deed to Cynthia R. Thompson by Ronald Chad Thompson, and recorded in Deed Book 69-B, Page 449, in the RMC Office for Spartanburg County, S.C.

Being the same property conveyed in Webster Shane Thompson by deed of Ronald Chad Thompson and Cynthia R. Thompson dated May 30, 2002, and recorded May 31, 2002 in Deed Book 75-W, Page 541, in the RMC Office for Spartanburg County, S.C.

Said Mortgage 2 was recorded in Mortgage Book 4209 at Page 752 on April 15, 2009, in the Register of Deeds Office for Spartanburg County. Mortgage 1 and Mortgage 2 are sometimes hereinafter referred to as the "Mortgages").

12. Mortgagor was the record owner of the subject real properties as of the date the Lis Pendens was filed. Plaintiff is the lawful owner and holder of the Notes, the Forbearance Agreement and the Mortgages.

13. The Mortgages constitute a first lien upon the subject properties.

14. The Note, Forbearance Agreement and Mortgages provide:

a. that upon the failure by Debtor and/or Mortgagor 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 Mortgages and the properties secured thereby; and

c. for the recovery of reasonable attorney's fees should the Notes, Forbearance Agreement and Mortgages be placed in the hands of an attorney for collection.

15. Debtor and Mortgagor have defaulted in payments and Plaintiff has exercised its option to declare the entire outstanding indebtedness immediately due and payable.

16. Plaintiff has placed the Notes, the Forbearance Agreement and the Mortgages in the hands of Roe Cassidy Coates & Price, P.A. for collection/foreclosure.

17. 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 Amended and Refiled Lis Pendens, Summons For Relief and Foreclosure 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 attended 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 include exceptional circumstances delaying conclusion beyond the normal time. In light of the above, the size of the mortgage debt, and Plaintiff's attorney's qualifications, Ten Thousand and 00/100 Dollars (\$10,000.00) is a reasonable attorney's fee in this matter. Additionally, Plaintiff is entitled to reimbursement of its costs, which to date total Six Hundred Seventy six and 52/100 Dollars (\$676.52).

18. Plaintiff is entitled to foreclose the Mortgages.

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19. The amount due and owing on the Notes and secured by the Mortgages as of the date of hearing, with interest at the rate provided in the Forbearance Agreement, and other costs and expenses of collection, exclusive of future costs and expenses, with a combined daily accrual rate of \$233.86, is as follows:

a.	Total Principal Balance:	\$1,768,693.76
b.	Total Interest Due:	\$96,017.62
c.	Total Late Charges:	\$980.16
d.	Taxes/Insurance Advanced:	\$0.00
e.	Attorney Fees:	\$10,000.00
f.	Costs to Date:	\$676.52

**BALANCE DUE: \$1,876,368.06**

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

21. The anticipated balance due and owing by Debtor as of Sales Day ~~February 1,~~ <sup>MARCH 1,</sup> 2010, shall be One Million Eight Hundred Seventy Thousand Six Hundred Two and 60/100 Dollars (\$1,870,602.60) exclusive of costs and attorney's fees, with a daily accrual rate of \$233.86.

22. Plaintiff is seeking a deficiency judgment as to Debtor and Mortgagor and is entitled to have any equity of redemption barred and to have the properties sold separately at public auction on Legal Sales Day ~~February 1, 2010,~~ <sup>MARCH 1, 2010</sup> or the soonest date thereafter available, with the proceeds to be applied towards costs and expenses, attorney's fees, and the mortgage indebtedness.

23. In the event there are surplus funds after payment of Plaintiff's debt, 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.

24. The following named parties may claim a lien on or interest in the above described property by virtue of instruments filed of record in the Office of the ROD for Spartanburg County or the Office of the Clerk of Court for the above-named county but if such liens exists, they are junior and subordinate to that of Plaintiff herein:

a. Flint Equipment Company is made a party to this proceeding by way of its judgment against Shane Thompson d/b/a Thompson Grading, filed July 21, 2009, in the Office of the Spartanburg County Clerk of Court in Judgment Roll Number 2009-CP-42-03974.

25. The property which is subject of Mortgage 1 is shown by the public records for Spartanburg County South Carolina as being owned by Shane Thompson a/k/a Webster S. Thompson who is the same Webster Shane Thompson named in the Complaint on record in this matter. The Pleadings in the action should be amended to reflect the named Defendant Webster Shane Thompson as "Webster Shane Thompson a/k/a Shane Thompson a/k/a Webster S. Thompson" in accordance with Rule 15(b) of the South Carolina Rules of Civil Procedure to conform to the evidence.

26. The Notes, Forbearance Agreement and Mortgages 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 Affordable Modification Program, and/or the United States Treasury Supplemental Directive 09-01 (collectively referred to hereafter as "HMP"). The loan involved herein is commercial in nature.

**CONCLUSIONS OF LAW:**

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

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1. The Pleadings in the action be amended to reflect the named Defendant Webster Shane Thompson as "Webster Shane Thompson a/k/a Shane Thompson a/k/a Webster S. Thompson" in accordance with Rule 15(b) of the South Carolina Rules of Civil Procedure to conform to the evidence.

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

3. As of the date of hearing, there is due to Plaintiff under the terms of the Note and the Mortgage, the sum of One Million Eight Hundred Seventy Six Thousand Three Hundred Sixty Eight and 06/100 Dollars (\$1,876,368.06), which includes attorney's fees of Ten Thousand and 00/100 Dollars (\$10,000.00) and costs to date of Six Hundred Seventy Six and 52/100 Dollars (\$672.52), with interest on said debt from the date of hearing through the date of compliance at the contract rate.

4. Plaintiff's Mortgages 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;

5. The mortgaged premises, as described in the Complaint and previously in this Decree, be sold separately at public auction on Legal Sales Day ~~February 1, 2010~~ <sup>MARCH 1</sup>, 2010, or on some subsequent date designated by the Court; and

6. 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, sell the mortgaged premises described in the Complaint and previously in this Decree separately to the highest bidder, at public auction at the Spartanburg County Courthouse on Legal Sales Day February 1, 2010, during the usual hours of public sale, on the following terms:

a. the term of each sale shall be cash;

b. the purchaser shall pay for deed stamps and costs of recording the deed for each property;

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 contract through the date of compliance;

e. Plaintiff seeking a deficiency, the bidding shall not be closed upon the initial date of sale of each property and shall remain open for thirty (30) days in compliance with the Code of Laws of South Carolina, 1976, as amended, § 15-39-720;

f. in the event that a 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 Master-in-Equity 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;

g. upon a purchaser's compliance with the terms of the sale, the Master-in-Equity shall execute a good and sufficient deed of conveyance to the premises, and the purchaser shall thereby be entitled to possession of the premises;

h. in the event a 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; and

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i. each 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 properties 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 each sale shall be applied as follows:

First, to the payment of all costs and expenses of this action; next to the payment of the attorney's fee as set forth herein relating to the first cause of action; next to the payment of the amount due upon the Notes, the Forbearance Agreement and the Mortgages owned by Plaintiff; and finally, after disbursing the proceeds of each 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 each 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 properties 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.

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 a sale shall be indexed in the grantor index by the ROD 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 each sale are applied to the indebtedness due as outlined above, said deficiency shall be assessed against Debtor and Mortgagor and Plaintiff shall have personal judgment against Debtor and Mortgagor 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.

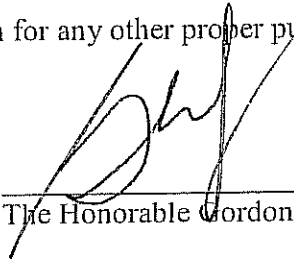
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED:

That pursuant to Section 29-3-650 of the Code of Laws of South Carolina, 1976, as amended, the Clerk of Court is hereby directed to immediately enter judgment against Debtor and Mortgagor in the amount of One Million Eight Hundred Seventy Six Thousand Three Hundred Sixty Eight and 06/100 Dollars (\$1,876,368.06) as of the date of the hearing, plus future court costs, future 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 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 each of the mortgaged premises, the Court shall credit upon the judgment the amount paid to the Plaintiff

from the proceeds of each 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.



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The Honorable Gordon G. Cooper

Spartanburg, South Carolina

January 11, 2010

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