

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2009 JUL 22 11:17
MARC KITHENS

American General Financial Services, Inc.,)
)
Plaintiff(s),)

**JUDGMENT OF FORECLOSURE
AND ORDER FOR SALE**

vs.)

C.A.# 2009-CP-42-1616

Walter G. Kellett a/k/a Walter G. Kellett, Jr. a/k/a)
Walter Grady Kellett Jr. a/k/a Grady Kellett; Shannon)
Kellett a/k/a Shannon R. Kellett; The South Carolina)
Department of Motor Vehicles; Commercial Credit)
Corp.;)

**Non-eligible under the
Home Affordable Modification Program**

Defendant(s).)

**Deficiency Demanded against Walter G.
Kellett a/k/a Walter G. Kellett, Jr. a/k/a
Walter Grady Kellett Jr. a/k/a Grady Kellett
and Shannon Kellett a/k/a Shannon R. Kellett**

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 matter was referred to the undersigned to make appropriate findings of facts and conclusions of law with authority to enter a final judgment in the cause.

Pursuant to the said Order of Reference a hearing was held. The testimony was taken, which is reported herewith, and from the testimony and evidence, I find, conclude and order as follows:

FINDINGS OF FACT:

1. The Lis Pendens was filed on March 20, 2009.
2. The Summons and Complaint were filed on March 20, 2009.
3. Service was made upon the Defendant(s) named in this Report as is shown by the proof(s) of service filed herein.
4. The Defendant(s) Walter G. Kellett a/k/a Walter G. Kellett, Jr. a/k/a Walter Grady Kellett Jr. a/k/a Grady Kellett; Shannon Kellett a/k/a Shannon R. Kellett; and Commercial Credit Corp. is/are

in default as shown by Affidavit on file herein. The South Carolina Department of Motor Vehicles filed an answer through its attorney.

5. All Defendants in default and all attorneys of record and Defendants pro se were notified of the time, date, and place of hearing in this matter.

6. On or about March 16, 1998, for value received, Shannon R. Kellett and Walter G. Kellett executed and delivered to American General Finance, Inc., a certain promissory note in writing, according to the terms and conditions set out therein, wherein said mortgagor(s) promised to pay to American General Finance, Inc. the sum of Seventeen Thousand Six Hundred Eighty Nine and 20/100ths (\$17,689.20) Dollars, together with interest thereon at the rate of 13.50 per cent per annum.

7. In order to better secure the payment of the said debt, Walter G. Kellett, Jr. And Shannon R. Kellett executed and delivered to American General Finance, Inc., its successors and assigns, a mortgage covering the real property which is the same as that described in the Complaint herein.

8. The said mortgage was recorded on March 17, 1998 in the Office of the Clerk of Court/RMC for Spartanburg County in Mortgage Book 2029, at Page 784.

9. As further security for the said debt, Defendants Kellett and Kellet granted to American General Finance, Inc. a security interest in the mobile home situate upon the subject real property, specifically a 1973 Phoen mobile home, VIN#60122FK3210.

10. Said security interest in vehicle(s) was perfected by having the lien of Plaintiff or its predecessor in title noted on the SCDMV title certificate(s).

*11. American General Finance, Inc. changed its corporate name to American General Financial Services, Inc., the Plaintiff herein, in 7/31/2001.

12. This mortgage constitutes a first lien on the subject property.

13. The Plaintiff in this action is the owner and holder of the note and mortgage it is seeking

to foreclose.

14. The payments due on the note described above have not been made as provided for in the note(s) or re-amortization agreement, 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 herein for collection.

15. The sum of \$900.00 is a reasonable fee to allow 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 amount due and owing on the note to the Plaintiff, with interest at the rates provided in the note, and other costs and expenses of collection, including attorney's fees, secured by the note and mortgage, is as follows:

As to the first mortgage:

Principal Balance	13,036.70
Interest accrued to July 22, 2009 at 13.50%	1,716.63
Late Charges	25.00
Funds advanced	0.00
Credits or unapplied funds	0.00
Costs of Collection prior to hearing	505.00
Attorney's Fees	900.00

Total Debt Secured by note and Mortgage, including interest to date shown \$ 16,183.33

Interest for the period from the date shown above through the date of this Judgment at above stated rate to be added to the above stated "Total Debt" to comprise the amount of the judgment debt entered herein and interest after the date of judgment at the above stated rate on the judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the mortgage through the date to which such interest is computed.

17. The Plaintiff is seeking foreclosure of the mortgage and has demanded the right to a deficiency judgment. Since a deficiency judgment is demanded, the bidding will remain open for a period of thirty (30) days as prescribed by law.

18. The Defendant(s) named below claim or may claim a lien upon or interest in the subject property and in the event there is a surplus from the sale, the validity, priority, and amount of any such lien claim will be determined at a hearing subsequent to the sale, in accordance with Rule 71(c) SCRCF. The said Defendant(s) and such claims or liens are as follows:

(a) Citifinancial, Inc., f/k/a Commercial Credit Corp by virtue of a judgment filed 03/27/2000, Case number 99-CP-42-3258.

19. The note and mortgage provided by the Plaintiff in this case is not owned, securitized or guaranteed by either the Federal National Mortgage Association ("Fannie Mae" or FNMA) or the Federal Home Loan Mortgage Corporation ("Freddie Mac" or FHLMC).

20. The Plaintiff is currently not a participant in the Home Affordable Modification Program (HMP).

CONCLUSIONS OF LAW

I, therefore, conclude as follows:

1. The Plaintiff should have judgment of foreclosure of its mortgage.

2. The mortgaged property should be ordered sold subject to all outstanding taxes and assessments which are not past due, if any, at public auction after due advertisement. That after making the required deposit, the successful bidder at the sale should be required to pay interest at the rate set forth in the obligation described in the Complaint, or if none specified after default, at the legal rate, from the date of sale to the date of compliance.

3. The proceeds arising from such sale should be applied, first, to the costs and disbursements of this action, and next, to the payment and discharge of the amount of Plaintiff's debt and interest, or so much thereof as the proceeds will pay, and any surplus should be held pending further order of the Court.

Now, on motion of Plaintiff's attorney, Laura Bardsley Houck:

IT IS ORDERED, ADJUDGED AND DECREED:

1. That there is due to the Plaintiff on the obligation and mortgage set forth in the Complaint the sum of \$16,183.33, representing the "Total Debt" due Plaintiff as set out above, infra, with respect to its mortgage, together with interest at the rate provided in said obligation, or if none specified after foreclosure, at the legal rate, on the balance of principal from the aforesaid date to the date hereof.

2. The amount due in the preceding paragraph (the "Total Debt" as set forth in Paragraph 16, infra, and later accrued interest on the principal) shall constitute the total judgment debt due the Plaintiff and shall bear interest hereafter at the legal rate.

3. There shall also be due to Plaintiff the amount of any advances made by the Plaintiff hereafter and prior to sale pursuant to the note and mortgage being foreclosed for the protection of the property or the interest of the Plaintiff therein.

4. That the Defendant or Defendants liable for the aforesaid mortgage debt do, on or before the date of sale of the property hereinafter described, pay to the Plaintiff, or Plaintiff's attorneys, the amount

of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

5. 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 subject to all outstanding taxes by the Master In Equity, at public auction, at the County Court House, in the City of Spartanburg, County and State aforesaid, on the next Salesday according to statute first after the advertisement of said sale once a week for three (3) successive weeks in a newspaper of general circulation published in the County in which the subject property is located, (and should the regular day of judicial sales fall on a legal holiday, then and in such event, the Salesday shall be on Tuesday next succeeding such holiday), on the following terms, that is to say:

a. FOR CASH: There will be required a deposit of 5% of 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, 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 legal rate.

c. Purchaser to pay for the preparation of the deed, deed stamps and costs of recording the deed.

6. If Plaintiff be the successful bidder at 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 on Plaintiff's indebtedness.

7. As a personal or deficiency judgment is demanded, the bidding will remain open for a period of thirty (30) days after the date of sale as provided by law in such cases.

8. 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 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 date of sale, then the Master In Equity shall advertise the said premises for sale on the next, or some subsequent Salesday, at the risk of the former highest bidder, and so from time to time thereafter until a full compliance shall be secured. At the hearing on this matter, the undersigned directed that the property be advertised for sale. In the event an advertisement is published prior to the entry of this written Order, such advertisement is hereby ratified and approved nunc pro tunc as if the same were published after the entry of this Order.

9. That the undersigned Master In Equity do apply the proceeds of the sale as follows:

First: To 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 attorneys, of the amount of Plaintiff's debt and interest on its mortgage, or so much thereof as the purchase money will pay on the same;

Next: Pending further order of the Court.

10. It is further **ORDERED, ADJUDGED AND DECREED** that in the event the successful bidder is other than the Defendant in possession herein, the Sheriff of Spartanburg County is ordered and directed to eject and remove from the premises the occupant or occupants of the property sold, together with all personal property located thereon, and to 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 possession.

11. And it is further **ORDERED, ADJUDGED AND DECREED** that each Defendant named herein, and all persons whosoever claiming under him, them or it, 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.

12. **IT IS FURTHER ORDERED** that the deed of conveyance made pursuant to said sale shall contain the names of only the first named Plaintiff and the first named Defendant and the Defendant who is the titleholder of the mortgaged property at the time of the filing of the Lis Pendens of the within action, and the name of the grantee, and the Office of the CCCP/RMC should be authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

13. **IT IS FURTHER ORDERED** that upon completion of a successful sale and full compliance, the CCCP/RMC for Spartanburg County shall mark the mortgage to Plaintiff being foreclosed herein satisfied of record by foreclosure.

14. The following is a description of the premises herein ordered to be sold:
(see Exhibit "A" attached hereto and incorporated herein by reference.)

15. **IT IS FURTHER ORDERED** that the South Carolina Department of Motor Vehicles shall issue a mobile home certificate of title to the successful purchaser at the foreclosure sale.

16. **AND IT IS FURTHER ORDERED** that if a representative of the Plaintiff or its attorney is not present at the time and place of the sale as advertised by the undersigned, without explanation or without prior notification to the Court of its planned absence, the sale shall not be held, the property shall be withdrawn, and the same shall be sold on the next subsequent scheduled sales day without prejudice to the rights of any parties or prospective purchasers.

_____, 20____
Spartanburg, South Carolina

Gordon G. Cooper
Master In Equity, Spartanburg County

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EXHIBIT A

All that certain piece, parcel of lot of land with improvements thereon, situate, lying and being in the County of Spartanburg, State of South Carolina, being shown and designated as Lot No. 239 on a plat of Brookside Village- Plat 1, recorded in the Plat Book 71, Pages 298-299, RMC Office for Spartanburg County. Reference to said plat is made for a more detailed description.

This is the same property conveyed to Shannon R. Kellett and Walter G. Kellett, Jr. by deed of Jerry M. Burnett, recorded 03/1/7/1998 in Deed Book 7N at page 146 in the Register of Deeds for Spartanburg County, South Carolina.

Includes a 1973 Phoenix Mobile home situate upon the real property, VIN 60122FK3210

TMS: 5-21-15-073.00

Property address: 106 Millbank Rd., Wellford, SC 29385

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