

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

Branch Banking and Trust Company,))
)
Plaintiff,)
v.)
)
Chaching, LLC; David B. Black;)
Robert L. Scroggs;)
)
Defendants.)
)
_____)

ORDER OF FORECLOSURE
(Deficiency judgment against Chaching
LLC; David B. Black; and Robert L.
Scroggs - §29-3-650)
09-CP-42-5938

2010 APR 13 11:54 AM
CLERK OF COURT
Spartanburg County

This matter was referred to this Court to make appropriate findings of facts and conclusions of law with authority to enter a final judgment in this action, with any appeal to be directly to the South Carolina Supreme Court, in accordance with Rule 53 SCRPC.

Pursuant to the Order of Reference, I held a hearing attended by the attorneys of record, testimony was taken, which is reported herewith, and from the testimony and evidence, I make the following findings of fact, conclusions of law, and orders.

FINDINGS OF FACT

1. Chaching, LLC and David B. Black were served with the Summons and Complaint on November 2, 2009; and the defendants have not answered, filed responsive motions, or otherwise appeared and are therefore in default.
2. Robert L. Scroggs was served with the Summons and Complaint on November 4, 2009; and the defendant has not answered, filed responsive motions, or otherwise appeared and is therefore in default.
3. Defendants were notified of the time, date and place of the hearing in this matter.
4. Plaintiff alleged in its Complaint that the loan which is the subject of this foreclosure



action is not owned by Federal National Mortgage Association ("Fannie Mae") or Federal Home Loan Mortgage Corporation ("Freddie Mac"), and is not serviced by a lender which has agreed to participate in the Home Affordable Modification Program (HMP), and/or this loan is not subject to modification under HMP.

No counter affidavit or allegation has been filed by the defendants or any other parties to the action; therefore, I find that the plaintiff may proceed with this action.

5. According to the Affidavit filed herein, no defendant in default is in the military service of the United States of America as contemplated under the Soldiers' and Sailors' Civil Relief Act of 1940, and any amendments thereto.
6. Any notice required by the terms of the mortgage or by state or federal statutes has been given to the applicable defendant(s) prior to the commencement of this action.
7. The plaintiff is currently the owner and holder of a promissory note made, executed, and delivered by Chaching, LLC, promising to pay to First Federal Bank the principal sum of \$60,859.00 together with interest thereon at the fixed rate of 8.750 % per annum.
8. The plaintiff, Branch Banking and Trust Company, acquired First Federal Bank by merger. The promissory note was modified, renewed, and restated on two occasions. The most recent Note Modification Agreement executed on April 25, 2005 extended the maturity date to May 2, 2010.
9. To secure payment of the Note, the defendants, David B. Black and Robert L. Scroggs, as guarantors, executed and delivered to First Federal Bank a Guaranty Agreement on February 23, 2000, wherein and whereby each guarantor therein guaranteed jointly, severally and unconditionally, the debt of Chaching, LLC in favor of plaintiff.

A handwritten signature in black ink, appearing to be "X [unclear] [unclear]", is located in the bottom right corner of the page.

10. To further secure the payment of the note described above, Chaching, LLC made, executed and delivered to First Federal Bank, a mortgage dated February 23, 2000, which was recorded in the Office of the ROD for Spartanburg County on February 24, 2000 in REM Book 2312 at page 316.
11. Branch Banking and Trust Company is the owner and holder of the note, guaranty agreement, and mortgage.
12. Plaintiff's mortgage constitutes a first mortgage lien on the subject property, subject only to *ad valorem* taxes or other liens given priority by statute.
13. Despite demand therefor, the defendants, Chaching, LLC, David B. Black, and Robert L. Scroggs, have made no payment towards satisfaction of the indebtedness evidenced by the note and mortgage since the payment due for May 2, 2009 and plaintiff has exercised its right, according to the terms of the note and mortgage, to accelerate the debt and declare the entire balance of the note and mortgage immediately due and payable. Defendant(s), Chaching, LLC, David B. Black, and Robert L. Scroggs, are in default on the note and mortgage.
14. The sum of \$4,000.00 is a reasonable fee to allow as attorney's 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. These sums are likewise reasonable based on the time necessarily devoted to representation of the plaintiff 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 incumbent 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. 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. There is due and owing on the note, as of March 3, 2010, the sum of \$42,020.62, which represents the following amounts:

Principal Balance Due	\$34,732.97
Interest from May 2, 2009 through March 3, 2010	\$2,547.25
Advances, adjustments to escrow, and uncollected late charges	\$110.40
Court costs advanced prior to hearing	\$630.00
Attorney's fees	\$4,000.00
TOTAL DEBT secured by Note and Mortgage, including interest to date shown	\$42,020.62

16. The plaintiff demands a personal or deficiency judgment against the defendants, Chaching, LLC, David B. Black, and Robert L. Scroggs, in accordance with §29-3-650, Code of Laws of South Carolina, 1976, as amended.

17. The mortgaged property is described, on the face of the mortgage, as follows:

All that piece, parcel or lot of land on the eastern side of Edwards Road in the County of Spartanburg, State of South Carolina and shown on SURVEY FOR JEREMY J. MEIR and JESSICA R. FEW, dated October 17, 1997, prepared by Chapman Surveying Co., Inc. recorded herewith in the Office for the RMC Spartanburg County, S.C. in Plat Book 139 at page 459, reference being hereby made of said plat for a more complete legal description thereof.

Also : A perpetual easement for ingress and egress shown as thirty foot (30') strip of land designated on the above-referenced survey. Reference is further made to the Joint Easement Agreement between Paul D. Dunn, Shirley S. Dunn, Thomas D. Lindsey, and Richard Dean Patterson and Kimberly Marie Patterson dated September 30, 1997 and recorded October 8, 1997 in the Office of the RMC for Spartanburg County, S. C. in Deed Book 66-R at page 498.

TMS No. 5-10-00-097.00

CONCLUSION

I conclude that this matter is not subject to, or affected by, the Home Affordable Modification Program.

I conclude that the plaintiff should have judgment against Chaching, LLC, David B. Black, and Robert L. Scroggs, for the amount due on the note, and plaintiff should have judgment of foreclosure of the mortgage and the mortgaged property should be sold at public auction after due advertisement; the proceeds of said sale should be applied to reduce the amount of plaintiff's judgment. Therefore,

IT IS ORDERED, ADJUDGED AND DECREED that the plaintiff shall have judgment against the defendants, Chaching, LLC, David B. Black, and Robert L. Scroggs, in the amount of \$42,020.62 as of March 3, 2010 together with interest thereon at the legal rate per annum until paid in full; the defendant(s), Chaching, LLC, David B. Black, and Robert L. Scroggs, shall make immediate payment thereof to the plaintiff; the Clerk of Court shall forthwith enter this judgment on the records of the Clerk's Office pursuant to §29-3-650, Code of Laws of South

Carolina, 1976, as amended.

The amount of the judgment shall be subject to increase to permit the plaintiff to recover additional costs, commissions, and expenses not included in the minimum deposit previously made in compliance with S.C. Code Ann. §14-11-310 (1976). 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.

IT IS ORDERED, ADJUDGED AND DECREED that the prayer of the complaint be granted, that the plaintiff's mortgage be foreclosed, the equity of redemption barred, and the defendants or anyone claiming any interest in or to the mortgaged premises be forever barred from claiming any interest in or to the mortgaged premises and that the mortgaged premises described in the Complaint, after advertisement as required by law, be sold, subject to any past due or accruing property taxes, by the Master in Equity for Spartanburg County at public sale at the Spartanburg County Courthouse on Sales Day, April 5, 2010, or on some convenient Sales Day thereafter for cash, purchaser to pay for stamps and deed.

IT IS FURTHER ORDERED that the successful bidder be required to deposit cash or certified check equal to five (5%) per cent of his bid as evidence of good faith, and should such bidder fail to comply with the terms of his bid within (20) days, that the deposit be forfeited and applied first to costs, then to plaintiff's debt; and that this Court forthwith, at the risk of the former purchaser, re-advertise, and resell the premises on some subsequent Sales Day under the

same terms and conditions, without further Order, until there shall be a compliance.

IT IS FURTHER ORDERED that the successful bidder be required to pay interim interest on the debt evidenced by the note and mortgage at the legal rate for judgments from the date of the Public Sale through the date of compliance with the bid.

If plaintiff be the successful bidder at the sale, for a sum not exceeding the amount of costs, expenses and indebtedness of the plaintiff in full, plaintiff may pay to the Master in Equity for Spartanburg County only the amount of the costs and expenses owed to the Master's Office, crediting the balance of the bid on plaintiff's indebtedness.

Since plaintiff has demanded a deficiency judgment, the bidding shall remain open for a period of thirty (30) days after the date of the sale as provided by §15-39-270, Code of Laws of South Carolina, 1976, as amended.

IT IS FURTHER ORDERED that pending a full compliance with the bid, the matter be held open for a final accounting which may become necessary as a result of advances made by the plaintiff, under the terms of the mortgage, between the commencement of the action and such full compliance; that the judgment having been entered, the debt shall bear interest at the legal rate until there is full compliance, with such interest to be charged only against the proceeds of sale.

IT IS FURTHER ORDERED that the proceeds of the sale be disbursed as follows:

- A. To the costs and expenses of this action;
- B. To the payment or reduction of plaintiff's judgment debt, plus any necessary advances for taxes and insurance which may have been made by the plaintiff between the date of this hearing and the day and time of the sale;

C. The balance, if any, be held for further Order of this Court.

After application of the proceeds of the sale, plaintiff shall be awarded a judgment for any deficiency remaining due on this debt.

IT IS FURTHER ORDERED that in the event the successful bidder be other than the defendants herein, this Court shall, if necessary, conduct further hearings to empower the Sheriff 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 the full, quiet and peaceable possession of the premises without delay, and to keep the successful bidder or his assigns in such possession.

IT IS FURTHER ORDERED 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 date.

IT IS FURTHER ORDERED that the plaintiff's mortgage as recorded in the Office of the ROD for Spartanburg County in REM Book 2312 at page 316 shall be released by this Court.

IT IS SO ORDERED.



Gordon G. Cooper
Master in Equity
Spartanburg County

Spartanburg, S.C.

Date: MAR 3, 2010

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FILED
CLERK OF COURT
SPARTANBURG COUNTY
Spartanburg, S.C.

