

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
Case #: 2009-CP-42-4286

Blue Ridge Savings Bank, Inc.,)
)
Plaintiff,)

vs.)

Pine Homes, LLC, a South Carolina)
Limited Liability Company, Russell)
A. Barney, Lynn C. Tenney,)
Palmetto Building Solutions, LLC, a)
South Carolina Limited Liability)
Company, and Jose Luis Hernandez,)
Individually and d/b/a Jh Masonry,)
)
Defendant(s).)

Decree of Foreclosure

(Non-eligible under the Home Affordable
Modification Program)
(Deficiency Judgments Requested as to
Pine Homes, LLC, a South Carolina Limited
Liability Company, Russell A. Barney and
Lynn C. Tenney)

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CLERK OF COURT
SPARTANBURG COUNTY
MARC KITCHENS
2009 SEP 28 AM 10:37

Pursuant to Circuit Rule 53 of the South Carolina Rules of Civil Procedure 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 case.

Pursuant to the Order of Reference a hearing was held, attended by Plaintiff's attorney of record. Testimony was taken (herewith reported). From the testimony and evidence I make the following Findings of Fact, Conclusions of Law, and Order.

Findings of Fact

1. The Lis Pendens was filed in the Records for Spartanburg County (hereafter 'Records') on August 5, 2009.
2. The Summons and Complaint were filed on August 5, 2009.



3. The mortgage loan is not owned, securitized or guaranteed by the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac), and the server is not participating in the Home Affordable Modification Program (HMP). The HMP is inapplicable.

4. Defendants Pine Homes, LLC a South Carolina Limited Liability Company (hereafter 'Pine Homes'), Russell A. Barney (hereafter 'Barney'), Lynn C. Tenney (hereafter 'Tenney'), Palmetto Building Solutions, LLC a South Carolina Limited Liability Company (hereafter 'Palmetto') and Jose Luis Hernandez individually (hereafter 'Hernandez'), Hernandez doing business as Jh Masonry (hereafter 'Jh'). No demurrers, answers or notices of appearance have been filed with the attorneys for the Plaintiff, as shown by the Affidavit(s) of Default. Time for filing answers, demurrers, or notices of appearances has expired.

5. This is an action brought for the foreclosure of a real estate mortgage. Defendants have been served properly. The Court has jurisdiction of the parties and the real estate (which is located entirely in Spartanburg County, South Carolina).

6. On October 16, 2007, Pine Homes gave Plaintiff a written Promissory Note. On the same day, Pine Homes executed and delivered to Plaintiff a Construction Mortgage as security for the Note (both in the original amount of One Hundred Fifty-Four Thousand and no/100ths (\$154,000.00) Dollars, with interest thereon at nine point two five (9.25%) per cent and a variable rate of one per cent per annum over the prime rate as published in the Wall Street Journal and a maturity date of November 1, 2008. The Mortgage was recorded in the Records on October 18, 2007 in Mortgage Book 3983 at Page 953.

7. As further security for the above mortgage, Pine Homes executed and delivered to

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Plaintiff an Assignment of Rents, dated October 16, 2007, recorded October 18, 2007 in Mortgage Book 3983 at page 961 in records.

8. As further security for the note and mortgage, Defendants Barney and Tenney signed his/her continuing Commercial Guaranty in connection with the Note whereby he/she unconditionally guaranteed to Plaintiff the timely payment and performance of all liabilities of the Borrower to Plaintiff.

9. Thereafter, Plaintiff and Defendant Pine Homes entered into a Loan Modification Agreement dated November 12, 2008 wherein Pine Homes was allowed to make interest only payments until May 1, 2009 and the maturity date of the note and mortgage was extended to May 1, 2009.

10. Consecutive monthly installment payments of interest were due until May 1, 2009 when the entire balance of principal, interest and all other indebtedness owed by Borrower(s) to Note Holder (if any) were due and payable. The Note has matured according to its terms.

11. Pine Homes has defaulted in payment of the interest installments which became due and payable. Plaintiff has exercised its option to declare the full amount due and payable. Therefore, Pine Homes is in default. The entire balance of principal and accrued interest is due and payable, and Plaintiff is entitled to foreclosure.

12. Based on the complexity, responsibility, and time involved, \$3,000.00 is a reasonable fee for Plaintiff's attorney (for services performed and anticipated to be performed until final adjudication of this action) as provided for under the terms of the note and mortgage.

13. The amount due and owing on the note, with interest at the rate provided in the note (and other costs and expenses of collection, including an attorney's fee) is as follows:

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(a)	Principal due through September 28, 2009	\$ 153,349.61
	Interest due through September 28, 2009	\$ 5,703.08
	Late Charges	\$ 208.67
(b)	Costs of collection prior to hearing:	
	Case Filing Fee	\$ 150.00
	Filing Order of Reference	\$ 25.00
	Service fees	\$ 335.00
	Postage and copies	\$ 50.00
	Title Abstractor Fee	\$ 262.50
(c)	Attorney's fee	\$ 3,000.00
(d)	Master's fee	\$ 125.00

TOTAL DEBT secured by note and mortgage, including interest to date shown: \$ 163,208.86

Interest (at above-stated rate) for the period from the date shown in (a) above through the date of this judgment should be added to the "total debt" (above) and is the judgment debt herein. Interest (after the date of judgment at the judgment rate of 7.25%) should be added to the judgment debt to comprise Plaintiff's debt secured by the mortgage through the date to which such interest is computed.

14. Plaintiff has filed the necessary affidavit(s) in connection with the requirements of the Soldiers and Sailors Civil Relief Act of 1940 USCA, Title 50 App., Section 501, et. seq. I can find no basis for a stay of this proceeding.

15. Plaintiff specifically demands a deficiency judgment against Pine Homes, Barney and Tenney pursuant to S. C. Code Ann. Section 29-3-660 (1976) for any deficiency remaining after sale of the mortgaged premises. Plaintiff reserves its right to withdraw its demand for deficiency judgment at any time prior to the foreclosure sale herein.

16. Plaintiff is entitled to have judgment on the note and the mortgage foreclosed with the equity of redemption of Pine Homes forever barred. Plaintiff is entitled to have the premises sold at public auction on Legal Sales Day on November 2, 2009 or some subsequent Legal Sales Day. The sale shall bar the equity of redemption. The sale shall be subject to Spartanburg County property taxes and easements, to existing easements and to existing restrictions of record. The proceeds derived from the sale (after payments of costs and expenses of this action, including attorney's fees) shall be applied to the satisfaction of Pine Homes', indebtedness to Plaintiff.

17. Defendant(s) below named may have or claim some interest in, or lien upon, the premises because of the following.

A). Palmetto is the owner and holder of a Mechanic's Lien filed against Pine Homes entered August 1, 2008 in Roll # 30-615 in the original amount of \$4,700.00.

B). Hernandez dba Jh is made a party hereto by reason of any interest he/it may have or claim to have in the property which is the subject of this action by reason of an action filed on June 24, 2009 in civil action #2009CP4203541.

However, I find that each and every claim set out above and in this section/paragraph is junior and subordinate to the claim of Plaintiff.

CONCLUSIONS OF LAW

I, therefore, conclude as follows:

18. The lien of Plaintiff constitutes a First Lien on the property. Plaintiff should have judgment on the note and foreclosure of the mortgage.

19. The mortgaged property should be ordered sold at public auction after due

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advertisement. The sale shall be subject to Spartanburg County taxes and assessments (due on the day of sale), to existing easements of record, to existing restrictions of record. After making the required deposit at the time of bid, the successful bidder at the sale should be required to pay interest (from the date of sale through the date of compliance) at the rate set forth above.

20. The proceeds arising from such sale should be applied as set out below. a). First, to costs and disbursements of this action (plus reasonable attorney's fees); b). Next, to payment and discharge of Plaintiff's debt plus interest (or so much thereof as the proceeds will pay); and c). Last, any surplus to held pending further order of this court.

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED as follows.

A. This matter is properly before the Court.

B. Plaintiff is due \$163,208.86 on its mortgage which constitutes a First Lien on the Subject Property. This amount is the "Total Debt" due Plaintiff as set out in paragraph 13, infra, (together with interest at the rate provided in said obligation on the balance of principal from aforesaid date to the date hereof).

C. The amount due in the preceding paragraph (the "Total Debt" as set forth in paragraph 13, infra, and later accrued interest on the principal) constitutes the total judgment debt due Plaintiff. Plaintiff's total judgment debt shall bear interest hereafter at the rate of 7.25% per annum.

D. On or before the date of sale of the property (hereinafter described), Pine Homes shall pay to Plaintiff, (or Plaintiff's attorney), the amount of Plaintiff's total debt mentioned above, plus costs and disbursements of this action.

E. On default of payment (at or before the time herein indicated), the mortgaged

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premises (described hereafter) shall be sold by the Master in Equity for Spartanburg County, at public auction, at the Spartanburg County Court House, in Spartanburg, South Carolina on November 2, 2009 or some convenient Sales Day thereafter. Should the regular day of judicial sales fall on a legal holiday, then the Sales Day shall be on Tuesday next succeeding such holiday. The following terms shall govern the sale.

(a) CASH: The Master shall require a deposit of five (5%) per cent of the bid (in cash or equivalent) at the time of the bid, (if the successful bidder be other than Plaintiff). Such deposit shall be applied on the purchase price only upon compliance (within twenty (20) days) with the bid. In case of non-compliance the deposit will be forfeited and applied to the costs and to Plaintiff's debt.

(b) INTEREST: Interest on the balance of the bid shall be paid through the day of compliance at the rate of 7.25%.

(c) SALE: The sale shall be subject to Spartanburg County taxes and assessments, to existing easements and to existing restrictions of record.

(d) PURCHASER: Purchaser shall pay for the preparation of the deed, deed stamps, and costs of recording the deed.

F. If Plaintiff is the successful bidder at sale (for a sum not exceeding the amount of costs, expenses and the indebtedness of Plaintiff in full), then Plaintiff may pay to the Master only the amount of the costs and expenses, crediting the balance of the bid on Plaintiff's indebtedness.

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

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withdraws its demand prior to sale pursuant to S. C. Code Ann. Section 29-3-660 (1976) as amended.

H. The Master in Equity will advertise according to law. The advertisement shall give notice of the time and place of such sale and the terms thereof. The Master in Equity will execute to the purchaser(s) a deed to the premises sold subject to Spartanburg County taxes and assessments (due on the day of sale), to existing easements of record, and to existing restrictions of record. Plaintiff, or any other party to this action, may become a purchaser at such sale. If, upon such sale being made, the purchaser(s) should fail to comply with the terms thereof within twenty (20) days after date of sale, then the Master in Equity may advertise the premises for sale on the next (or some other subsequent Sales Day) at the risk of the former highest bidder, (and so from time to time thereafter until a full compliance shall be secured). If Plaintiff is the successful bidder, then at its option (or the option of its assignee), the deed may be taken subject to payment by grantee of any taxes or assessments constituting a lien against the property sold under this Order.

I. The Master in Equity shall apply the proceeds of the sale as follows: a). First to payment of the costs of this action; b). Then, to payment of Plaintiff's debt, (including principal, interest, escrow deficits, and attorney's fees as herein-above provided); and, c). any balance shall be held pending a further order of this court.

J. If the successful bidder is other than Plaintiff in possession of the property, the Sheriff of Spartanburg County is ordered and directed to eject and remove the occupant(s) of the property sold, together with all personal property located thereon. The Sheriff of Spartanburg County shall put the successful bidder (or his assigns) in full, quiet and peaceable possession of

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the premises without delay and shall keep the successful bidder (or his assigns) in such peaceable possession. Any interference with the activities of the Sheriff, or any of his deputies, as herein authorized, may constitute contempt of this Court and subject the persons(s) causing or responsible for such interference to punishment for this offense. Certified copies of the deed and this decree shall constitute sufficient warrant and authority to permit the summary eviction and ejection hereby authorized, without the need for a separate Writ of Assistance.

K. Pine Homes (and all persons claiming under him, her, them, or it), are forever barred and foreclosed of all right, title, interest, and equity of redemption in the mortgaged premises sold (or any part thereof).

L. The deed of conveyance made pursuant to the sale shall contain the names of only the first-named Plaintiff and the named Defendant(s) who is/are the titleholder(s) of the mortgaged property (at the time of filing the notice of pendency of this action) and the name of the grantee(s). The Clerk of Court for Spartanburg County is authorized to omit from the indices pertaining to such conveyance the name(s) of all parties not contained in the deed.

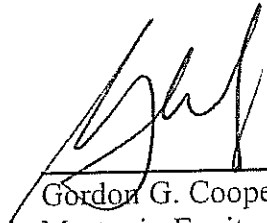
M. The following is a description of the premises herein ordered to be sold:

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 Lot 9 of Squire's Creek as shown on plat thereof recorded in Plat Book 152 at page 695 and having, according to said plat, metes and bounds as shown thereon.

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TMS#: 5 31-00 44.21
Address of Property: 939 Squires Point, Duncan, SC 29334

IT IS SO ORDERED.



Gordon G. Cooper
Master in Equity
Spartanburg, South Carolina

September 28, 2009

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2009 SEP 28 AM 10:38
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