

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
(Non-Jury Foreclosure)

First South Bank,)
)
Plaintiff,)
)
vs.)
)
Jonathan D. Metcalf,)
)
Defendant.)
_____)

JUDGMENT AND DECREE

C.A. No. 2009-CP-42-4846

(Deficiency Judgment Requested)

FILED
2009 OCT 22 AM 10:06
MARC KITCHENS

Pursuant to Rule 53, SCRPC, 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. Any appeal from this order is to the South Carolina Court of Appeals.

Pursuant to the said Order of Reference, a hearing was held on October 22, 2009, attended by Plaintiff's attorney. 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. Based upon the facts and/or evidence presented, the Court has determined that the loan is not owned, securitized or guaranteed by Fannie Mae or Freddie Mac and is not eligible under the Home Affordable Modification Program.
2. The Lis Pendens was filed on September 2, 2009.
3. The Summons and Complaint were filed on September 2, 2009.
4. Service was made upon the Defendant named in this Decree as shown by the proof of service filed herein.
5. Defendant, Jonathan D. Metcalf, is in default as shown by the Affidavit of Default filed herein.
6. Defendant was notified of the time, date and place of the hearing in this matter.
7. For value received, Defendant, Jonathan D. Metcalf, made, executed and delivered a Note dated January 24, 2002, promising thereby to pay to the order of Plaintiff the principal sum of Forty-Two

Thousand and No/100ths Dollars (\$42,000.00) with interest thereon from that date at the rate of Two (2%) Percent above the Plaintiff's prime rate of interest, to change as said prime rate of interest changes. 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, Defendant, Jonathan D. Metcalf, executed and delivered to Plaintiff a Mortgage in writing, dated January 24, 2002, covering real property in Spartanburg County, which is the same as that described in the Complaint. The Mortgage was filed for record on January 29, 2002, in the Office of the Register of Deeds for Spartanburg County, South Carolina, in Mortgage Book 2635, page 878. This Mortgage constitutes a first lien on the subject property.

9. The titleholder of record in and to the subject property as of the filing of the Lis Pendens in this action is Defendant, Jonathan D. Metcalf, who is the original mortgagor.

10. Payment due on the Note has not been made as provided for therein, and Plaintiff, as the holder thereof, has elected to accelerate payment of the entire indebtedness and has placed the Note and Mortgage in the hands of the attorney herein for collection.

11. All notices required by law have been given prior to the commencement of this action.

12. The sum of Three Thousand Five Hundred and no/100 Dollars (\$3,500.00) 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 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.

13. The amount due and owing on the Note, with interest at the rate provided in the Note, and all other costs and expenses of collection, including an attorney's fee, secured by the Note and Mortgage, is as follows:

(a)	Principal balance due as of October 22, 2009	\$ 40,801.91
(b)	Interest as of October 22, 2009 (<i>Per diem interest - \$5.87</i>)	812.28
(c)	Late charges	40.50

(d)	Filing Fees	150.00
(e)	Service Costs	57.50
(f)	Deposit with Master in Equity & filing fee	125.00
(g)	Attorney's Fees	<u>3,500.00</u>
		\$ 45,487.19

Interest for the period from the date shown in (b) above through the date of this Judgment at the 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 per diem rate of Five and 87/100ths Dollars (\$5.87) through the date of compliance with the bid 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.

14. Plaintiff has expressly requested deficiency judgment, and the sale ordered hereinbelow will not be final on the date it is held.

15. The following Defendant has filed an Answer: None

CONCLUSIONS OF LAW

I, therefore, conclude that Plaintiff should have judgment of foreclosure of the Mortgage and the mortgaged property should be ordered sold at public auction after due advertisement.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. The Mortgage loan is not owned, securitized or guaranteed by Fannie Mac or Freddie Mac, and is not eligible under the Home Affordable Modification Program.

2. There is due to Plaintiff on the obligation and Mortgage set forth in the Complaint the sum of Forty-Five Thousand Four Hundred Eighty-Seven and 19/100ths Dollars (\$45,487.19), representing the total debt due Plaintiff as set out in Paragraph 13, supra., together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof.

3. The amount due in the preceding paragraph (the "total debt" as set forth in Paragraph 13, supra., and later accrued interest on the principal) shall constitute the total judgment debt due Plaintiff and shall bear interest hereafter at the rate of five and twenty-five one hundredths percent (5.25 %) per

annum until bid compliance.

4. That Defendant, Jonathan D. Metcalf, is liable for the aforesaid mortgage debt and shall on or before the date of sale of the property hereinafter described pay to Plaintiff, or Plaintiff's attorney, 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 by the undersigned Master in Equity at public auction at the Spartanburg County Judicial Center, in the City of Spartanburg, County and State aforesaid, on **December 7, 2009**, or on some convenient sales day thereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event, the sales day shall be on the Tuesday next succeeding such holiday), and the following terms, that is to say:

A. FOR CASH: The undersigned Master in Equity will require a deposit of five percent (5%) on the amount of the bid (in cash or equivalent) at the time of the bid, same to be applied on the purchase price only upon compliance with the bid, but in case of noncompliance within twenty (20) days, same to be forfeited and applied to the costs and Plaintiffs' debt.

B. The sale shall be subject to taxes and assessments, and to existing easements and restrictions, and any other encumbrances.

C. Purchaser to pay for deed stamps and cost of recording the deed.

D. Purchaser to assume property taxes.

6. In the event an agent of Plaintiff does not appear at the time of sale, the within property shall be automatically withdrawn from sale and sold at the next available sales date upon the same terms and conditions as set forth in this Decree.

7. If Plaintiff is the successful bidder at said sale, for a sum not exceeding the amount of costs, disbursements, expenses and the indebtedness of Plaintiff in full, Plaintiff may pay to the undersigned Master in Equity only the amount of the costs, disbursements and expenses, crediting the balance of the bid on Plaintiff's indebtedness.

8. That the undersigned Master in Equity, will by advertisement according to law, give notice of the time, and place of sale, and the terms thereof; and will execute to the Purchaser, or Purchasers, a deed to the premises sold. 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 undersigned Master in Equity may advertise the said premises for sale on the next available sales day, at the risk of the former highest bidder, and so from time to time thereafter until full compliance shall be secured.

9. A personal or deficiency judgment having been demanded, the bidding will remain open after the date of sale for a period of thirty (30) days pursuant to Section 15-39-720, Code of Laws of South Carolina of 1976, as amended, Plaintiff may waive any of its rights prior to sale, including its right to a deficiency judgment, in accordance with Rule 71, South Carolina Rules of Civil Procedure. Plaintiff's waiver shall be made in writing.

10. That the undersigned Master in Equity will apply the proceeds of the sale as follows:

FIRST: To payment of the costs and expenses of this action.

NEXT: To the payment of Plaintiff's attorney's fees and court costs;

NEXT: To the payment of Plaintiff's mortgage;

NEXT: Any surplus will be held pursuant to Rule 71(c) SCRPC pending the further Order of this Court.

NEXT: If the proceeds of sale are insufficient to pay the amounts hereinbefore authorized to be paid out of said proceeds, with the costs and expenses, the Plaintiff's debt and interest, Plaintiff shall have deficiency judgment therefor against Defendant, Jonathan D. Metcalf, pursuant to South Carolina Code Section 29-3-660 (1976), and judgment will be entered without further notice of hearing.

11. 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 occupants 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.

12. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendant named herein and all persons whosoever claiming under him, them, or it, be forever barred and foreclosed of all

right, title and interest and equity or redemption in the said mortgaged premises so sold, or any part thereof.

13. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, pursuant to S.C. Code Ann. Section 30-9-31 (Supp. 1987), the deed of conveyance made pursuant to this sale shall be indexed in the grantor index by the Register of Deeds in the name of the owner of record of subject property immediately prior to execution of the deed, as well as in the name of the undersigned Master in Equity who executes such deed as grantor.

14. The undersigned Master in Equity will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance and disposing of any surplus funds pursuant to Rule 71(c) SCRCP.

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

All that certain piece, parcel or lot of land in the City and County of Spartanburg, South Carolina, situate, lying and being on the western side of Westover Drive (at its intersection with Phillips Street) and being shown and designated as Lot No. 17 in Block M on a plat of the property of Washington Heights Development dated October 22, 1946, made by Gooch & Taylor, Surveyors, and recorded in Plat Book 21, page 14-15, Register of Deeds Office for Spartanburg County. Said lot has a frontage on Westover Drive of 55.7 feet with a northern side line of 125 feet, a southern side line of 125.1 feet and a rear width of 50 feet. For a more detailed description, reference is hereby made to the plat above referred to.

This is the same property conveyed to Jonathan D. Metcalf by deed of Willie Pearl Smith, dated and recorded December 23, 1996, in Deed Book 65-D, page 747, said Register of Deeds.

Tax Map No.: 7-16-05-062.00

Property Address: 298 Westover Drive, Spartanburg, SC 29306

GORDON G. COOPER, MASTER IN EQUITY

Spartanburg, SC
October 22, 2009

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MARC KITCHENS