

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
CASE NO: 2009-CP-42-6088

Greer State Bank,)
)
Plaintiff,)
)
vs.)
)
Miguel Privado,)
)
Defendant.)
_____)

MASTER'S ORDER AND JUDGMENT
OF FORECLOSURE AND SALE

(Deficiency Demanded)
Non-Eligible Under the Home
Affordable Modification Program

2010 MAR -2 AM 11:14

CLERK OF COURT
SPARTANBURG COUNTY

Pursuant to Rule 53, *South Carolina Rules of Civil Procedure*, the above captioned matter was referred to the undersigned Master-in-Equity by Order of Reference filed on February 8, 2010 to make appropriate findings of fact and conclusions of law with authority to make final decisions and enter final judgment with respect to all matters raised in this action, including, without limitation, to hear and determine any post-judgment proceedings. Any appeal from this Order shall be directly to the South Carolina Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

Pursuant to the Order of Reference, a hearing was held on March 2, 2010 and attended by the attorneys of record, testimony was taken, which is reported herewith, and from the testimony and evidence, I find, conclude and order as follows:

FINDINGS OF FACT

1. A Lis Pendens was filed on October 20, 2009 in the Office of the Clerk of Court for Spartanburg County, South Carolina.

2. A Civil Action Coversheet, Certificate of Exemption/Withdrawal from Arbitration and Mediation, Summons and Notice and Complaint were filed on November 5, 2009 in the Office of the Clerk of Court for Spartanburg County, South Carolina.

3. Defendant was served with a copy of the Lis Pendens, Civil Action Coversheet, Certificate of Exemption/Withdrawal from Arbitration and Mediation, Summons and Notice and Complaint as is evidenced by Affidavit of Service filed on February 5, 2010.

4. Defendant is not in the Military Service of United States of America as evidenced by Affidavit of Non-Military Service filed on February 5, 2010.

5. Defendant is in default as is evidenced by Affidavit of Default filed on February 5, 2010.

6. Defendants and/or all attorneys of record were notified of the time, date and place of the hearing in this matter as evidenced by Notice of Hearing filed on February 19, 2010.

7. For value received, on or about January 25, 2007, Defendant executed and delivered to Plaintiff a Note ("Note 1") in the amount of \$36,085.00 together with interest thereon from the date at a variable rate of 1.00% over the Wall Street Journal Prime Rate. Other terms and conditions are stated in said Note 1 which is of record herein.

8. In order to secure payment of Note 1, Defendant made, executed and delivered a Mortgage to Plaintiff on January 25, 2007 in an amount not to exceed \$36,085.00, with interest upon the terms and conditions as set forth in Note 1. Mortgage 1 was duly filed and recorded in the ROD Office for Spartanburg County,

South Carolina on January 26, 2007 in Mortgage Book 3824, Page 945 and constitutes a first lien and encumbrance on the real property described herein below. A copy of Mortgage 1 is of record herein.

9. For value received, on or about January 25, 2007, Defendant Coleman executed and delivered to Plaintiff a Note ("Note 2") in the amount of \$20,000.00 together with interest thereon from the date at a variable rate of 1.00% over the Wall Street Journal Prime Rate. Other terms and conditions are stated in said Note 2 which is of record herein.

10. In order to secure payment of Note 2, Defendant made, executed and delivered a Mortgage to Plaintiff on January 25, 2007 in an amount not to exceed \$20,000.00 with interest upon the terms and conditions as set forth in said Note. The subject Mortgage was duly filed and recorded in the ROD Office for Spartanburg County, South Carolina on January 26, 2007 in Mortgage Book 3824 Page 954 and constitutes a second lien and encumbrance on the real property described herein below. A copy of Mortgage 2 is of record herein.

11. Plaintiff Greer State Bank is the owner and holder of the above-referenced Note and Mortgages and is the proper Plaintiff herein.

12. An event of default thereafter occurred under the terms of Note 1 and Mortgage 1 referenced above by reason of Defendant's failure and neglect to pay to Plaintiff the installment due May 25, 2009. No payment has been made to Plaintiff since June 25, 2009, said payment being applied to the principal due April 25, 2009 and interest due June 25, 2009.

13. An event of default thereafter occurred under the terms of Note 2 and Mortgage 2 referenced above by reason of Defendant's failure and neglect to pay to Plaintiff the interest installment due July 25, 2009. No payment having been made to Plaintiff since June 25, 2009, said payment being applied to the interest installment due June 25, 2009.

14. Plaintiff provided Defendant with all notices required under the Note, Mortgage and applicable law, if any.

15. Plaintiff, as the holder of said Notes and Mortgages, has elected to require immediate payment of the entire amounts due thereon and has placed the Notes and Mortgage in the hands of the attorney herein for collection by foreclosure.

16. The Notes and Mortgage referenced above provide that in the event of default, Plaintiff is entitled to recover all costs of collection. I find that since the inception of this action, Plaintiff's attorney has assumed responsibility for the institution of this action and has searched and updated the title on the subject property from the date the current owner received the property or the date the mortgage was executed to the date of the filing of the Lis Pendens. He has been responsible for the preparation of the following pleadings:

- (a) Lis Pendens;
- (b) Civil Action Coversheet, Certificate of Exemption/Withdrawal From Arbitration and Mediation, Summons and Notice and Complaint;
- (c) Affidavit of Non-Military Service
- (d) Affidavit of Default;
- (e) Order of Reference;
- (f) Notice of Hearing;
- (g) Proposed Final Decree;
- (h) Notice of Sale;
- (i) Other documents as applicable pertaining to service and finalization of this action.

He has arranged for service of process on the Defendant(s), has scheduled and attended the hearing in this matter, has provided reinstatement figures to the primary Defendant, if requested, and had telephone conversations with the Defendant, if requested.

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

Note 1

A.	Principal	\$31,670.04
B.	Interest (as of 3/2/10)	\$ 962.08
C.	Late Charges	\$ 130.97
D.	Appraisal Fee	\$ 1,350.00

Note 2

E.	Principal	\$19,848.04
F.	Interest (as of 3/2/10)	\$ 620.25
G.	Late Charges	\$ 30.00
H.	Costs of Collection prior to hearing	\$ 515.00
I.	Attorney's Fees	\$ 3,000.00

TOTAL DEBT SECURED BY NOTES AND MORTGAGES INCLUDING INTEREST TO THE DATE SHOWN	\$58,126.38
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Interest for the period from the date shown in (B) 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 contract rate of **4.25%** on the judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the Mortgages through the date to which such interest is computed.

18. The following Defendants claim or may claim a lien upon or interest in the subject property which is junior to the Mortgages held by Plaintiff. In the event there is a surplus from the sale of the subject property, the validity, priority and amount of any such lien or interest will be determined at a hearing subsequent to the sale, in accordance with Rule 71(c), *SCRCP*. The said Defendants and such claims or liens are as follows: None

19. That Plaintiff is seeking foreclosure of its mortgage and specifically seeks a personal or deficiency judgment against Miguel Privado.

20. The Mortgage referenced above is not owned, securitized or guaranteed by Fannie Mae or Freddie Mac, and is not held by a servicer who is participating in the Home Affordable Modification Program. Therefore, the Home Affordable Modification Program is inapplicable.

CONCLUSIONS OF LAW

I, therefore, conclude as follows:

Plaintiff should have judgment of foreclosure of its re-recorded Mortgage and the mortgaged property should be ordered sold at public auction after due advertisement.

The Home Affordable Mortgage Program is inapplicable.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. There is due Plaintiff on the Note and Mortgage described herein the sum of **\$58,126.38** representing the Total Debt due Plaintiff as set forth above, together with interest at the rate provided therein on the balance of principal from the date of aforesaid to the date hereof.

2. The amount due in the preceding paragraphs (the "Total Debt" as set forth supra and later accrued interest on the principal) shall constitute the total judgment debt due Plaintiff and shall bear interest hereafter at the contract rate of 4.25%.

3. That the Defendant liable for the aforesaid mortgage debt shall on or before the date of the sale of the property hereinafter described pay to Plaintiff or its attorney the amount of Plaintiff's Total Debt as aforesaid, together with the costs and disbursements of this action.

4. That on default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint as hereinafter set forth, shall be sold by the Master-in-Equity at public auction at the Spartanburg County Courthouse, Spartanburg, South Carolina on April 5, 2010 or on some convenient sale day hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event, the sales day shall be on Tuesday next succeeding such holiday), on the following terms, that is to say:

(a) FOR CASH: The Master-in-Equity will require a deposit of five (5%) percent on the amount of the bid (in cash or equivalent) at the time of the sale, 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 to the date of compliance shall be at the legal post judgment rate.

(c) The sale shall be subject to taxes (including specifically any delinquent taxes) and assessments, existing easements and restrictions of record, and any other senior encumbrances.

(d) Said Mortgage constitutes a first lien on the subject property.

(e) Purchaser to pay for deed stamps (if applicable) and costs of recording the deed.

(f) If Plaintiff is the successful bidder at said sale, for a sum not exceeding the amount of costs, expenses and indebtedness of Plaintiff in full, Plaintiff may pay to the undersigned Master-in-Equity only the amount of the costs and expenses, crediting the balance of the bid on Plaintiff's indebtedness. No deposit shall be due if Plaintiff is the successful bidder.

5. A deficiency judgment having been demanded, the sale shall reopen for additional bids at 11:00 A.M. on the 30th day following initial Sale Day.

6. That the Master-in-Equity will, by advertisement according to law, give notice of the time, and the 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 Master-in-Equity may advertise the said premises for sale on the next, or some other subsequent sales day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured.

7. The Master-in-Equity will apply the proceeds of the sale as follow:

FIRST: To payment of the amount of the costs and expenses of this action, including any guardian *ad litem* fees or fees of attorney's appointed under Order of Court;

NEXT: To the payment to Plaintiff or Plaintiff's attorney, of the amount of Plaintiff's total debt secured by the Mortgages; and

NEXT: Any surplus will be held pending further Order of this Court.

8. To the extent that the proceeds of sale shall fail to pay the Total Debt owed to the Plaintiff, together with the costs and expenses of this action and the costs of sale, the Plaintiff shall have a deficiency judgment against the Defendant Miguel Privado, which judgment shall be entered without further notice or hearing.

9. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that in the event the successful bidder is other than the Defendants 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.

10. And IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each Defendant(s) named herein and all persons whosoever claiming under him, her, 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.

11. IT IS FURTHER ORDERED that pursuant to *S.C. Code Ann. § 30-9-31*, as amended, 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 was the title holder of the mortgaged property at the time filing of the Notice of Pendency of the within action, and the name of the Grantee, and the ROD or Clerk of Court is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

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

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

LEGAL DESCRIPTION AND PROPERTY ADDRESS:

ALL that piece, parcel or lot of land, with all improvements thereon or hereafter constructed thereon, situate, lying and being in the State of South Carolina, County of Spartanburg, City of Greer, on the southeasterly side of Arlington Road at its intersection with Moss Street, and being more particularly described on a plat entitled "PROPERTY OF CAPER HOUSE, INC." dated July 20, 1977 by John A. Simmons, Surveyor, and having according to said plat the following metes and bounds, to-wit:

BEGINNING at an iron pin on the southeast side of Arlington Road at its intersection with Moss Street, said iron pin being located at edge of sidewalk and running thence with sidewalk edge N. 54-37 E. 67 feet to an iron pin; thence S. 32-52 E. 131.8 feet to an iron pin; thence S. 53-39 W. 68.2 feet to an iron pin; thence N. 32-23 W. 133 feet to the point of beginning.

This is the identical property conveyed to Miguel A. Privado by deed of Betty J. Cantrell recorded on April 24, 2006 in Deed Book 85-Q at page 269, Spartanburg County Records.

TAX MAP REFERENCE: 9 03-13 055.00

Property Address: 300 Arlington Rd., Greer, SC 29651

14. IT IS FURTHER ORDERED that if Plaintiff or 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 day.

Gordon G. Cooper
Master-in-Equity

March _____, 2009

Spartanburg, South Carolina

FILED
CLERK OF COURT
SPARTANBURG, SC
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