

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
Case No. 2009-CP-42-3330

Green Tree Servicing, LLC,)
formerly known as Green Tree)
Financial Servicing Corporation, a)
Limited Liability Company under)
the laws of the State of Delaware,)

Plaintiff,)

v.)

Dewayne P. McClary and the)
Estate of Johnny H. Bailey through)
the Personal Representative)
Jewell M. Wood,)

Defendant(s).)

**MASTER IN EQUITY'S ORDER AND
JUDGMENT OF FORECLOSURE
AND SALE**

Deficiency Demanded
(against Dewayne P. McClary)

FILED
CLERK OF COURT
2009 OCT 22 AM 11:24
MARC KITCHENS

Pursuant to Rule 53 SCRCF, the above-entitled matter was referred to the undersigned to make appropriate findings of fact and conclusions of law with authority to enter a final judgment in the matter; with any appeal from this Order to the South Carolina Supreme Court or to the Court of Appeals under Rule 203 (d)(1), SCACR.

Pursuant to the Order of Reference, a hearing was held in the Office of the Master in Equity for Spartanburg County and was attended by the attorneys of record. Testimony was taken at said hearing and 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 May 29, 2009; the Amended Lis Pendens was filed on June 12, 2009; the Second Amended Lis Pendens was filed on July 24, 2009.
2. The Summons and Complaint were filed June 12, 2009; the Amended Summons and

Complaint were filed on July 24, 2009.

3. The loan that is the subject of this action is subject to modification under HMP, but it has been determined that the loan will not be modified because the property is vacant.
4. Service was made upon all Defendants as shown by the Affidavit(s) of Service filed of record.
5. Dewayne P. McClary ("Mr. McClary") and the Estate of Johnny H. Bailey through the Personal Representative, Jewell M. Wood are in default as shown by the Affidavit(s) of Default filed of record.
6. According to the Affidavit(s) filed of record, no Defendant is in the Military Service of the United States of America, as contemplated under 50 U.S.C.A. App. §520, Servicemembers Civil Relief Act, as amended December 19, 2003.
7. All Defendants were notified of the time, date, and place of the hearing in this matter.
8. For value received, Mr. McClary made, executed and delivered a Note and Security Agreement dated the 20th day of August, 1997, promising thereby to pay to the order of Green Tree Financial Servicing Corporation ("Green Tree ") the sum of Sixty-Six Thousand Eight Hundred Fifty-Five and 00/100 (\$66,855.00) Dollars, with interest at 9.77% per annum ("Note"). Other terms and conditions are stated in the Note, which is of record herein. Green Tree Financial is now known as Green Tree Servicing, LLC, formerly known as Green Tree Financial Servicing Corporation, a Limited Liability Company under the laws of the State of Delaware ("Plaintiff").
9. To better secure the payment of the Note described above, Mr. McClary made, executed and delivered to Green Tree a Mortgage in writing dated August 20, 1997, covering real property ("Mortgaged Property") in Spartanburg County, which is the same as that

described in the Complaint ("Mortgage"). The Mortgage was filed on August 21, 1997, in Book 1957, at Page 758, in the Office of the Register of Deeds for Spartanburg County, South Carolina.

10. To further secure the debt, a South Carolina Certificate of Title ("Title") was issued on a certain 1997 Fleetwood Mobile Home, Serial #NCFLT69AB13150WP12 (the "Collateral") to Mr. McClary, as Owner, with Green Tree listed as the First Lienholder.
11. The Mortgage constitutes a purchase money mortgage on the Mortgaged Property and the Plaintiff's lien recorded on the face of the Title constitutes a first lien on the Collateral.
12. The Plaintiff in this action is the owner and holder of the Note and Mortgage it is seeking to foreclose.
13. The titleholder(s) of record in and to the Mortgaged Property and Collateral as of the filing of the Lis Pendens in this action was Mr. McClary.
14. Payment due on the Note and Mortgage has not been made as provided for therein, and the 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.
15. The amount due and owing on the note, with interest at the rate provided therein, and other costs and expenses of collection, including an attorney's fee, is as follows:

(a)	Principal due	\$ 65,173.38
(b)	Interest from 03/20/2009 to 10/22/2009 at interest rate 9.77 % per annum	\$ 2,089.10
(c)	Escrow adjustments (debits or credits)	\$ 0.00
(d)	Advancements properly chargeable	
	1. Insurance (06/08/2009 -06/08/2010)	\$ 710.45
	2. Insurance (08/25/2008 - 06/07/2009)	\$ 139.38
	3. Deferred Amount	\$ 1,429.71
(e)	Credit for credit life rebate or other such required credit	\$ 0.00

(f)	Late Charges before being sent to Attorney for collection	\$ 40.00
(g)	Costs of collection (service, filing, etc.)	\$ 1,138.74
(h)	Attorney's Fees	\$ 2,500.00

TOTAL DEBT secured by security agreement
and mortgage, including interest to date shown \$ 73,220.76

Interest for the period from 10/22/2009, as shown above at the stated rate of 9.77% per

annum, shall be added to the Principal Balance shown through the date this Judgment is

filed. After the date of judgment, interest at the rate of 9.77% per annum on the total

judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's

debt secured by the Mortgage.

16. The Plaintiff is seeking the usual foreclosure of the Note and Mortgage and has in its Complaint expressly demanded the right to a personal or deficiency judgment against Mr. McClary pursuant to Rule 71(b) of the South Carolina Rules of Civil Procedure. However, Plaintiff reserves the right to waive the deficiency at the time of the sale.

17. Upon information and said belief, said information being obtained from the records of Spartanburg County, South Carolina, the Defendants below-named may claim to have some interest in or lien upon the Mortgaged Property, but such interest or lien is junior and subordinate to Plaintiffs mortgage to wit:

a. The Estate of Johnny H. Bailey, by virtue of any interest it may have in the subject property pursuant to that junior mortgage from Johnny H. Bailey to South Tyger Development, LLC, dated March 24, 1998, and recorded on March 27, 1998, in Book 2034 at Page 654.

The above mortgage encumbers the property which is the subject of this foreclosure action, and upon information and belief the subject property was released from said mortgage but never satisfied of record.

CONCLUSIONS OF LAW

I, therefore, conclude as follows:

1. The Plaintiff should have judgment of foreclosure of the Mortgage in amount of the Total Debt due under the Note secured by the Mortgage and the Collateral.
2. The Mortgaged Property and Collateral shall be ordered sold at public auction after due advertisement and the proceeds of sale applied to the debt due under the Note, and a deficiency judgment pursuant to Rule 71(b) of the South Carolina Rules of Civil Procedure. The Plaintiff reserves the right to waive the deficiency at the time of the sale.
3. The Plaintiff's lien is a purchase money mortgage lien on the Mortgaged Property and the Plaintiff's lien recorded on the face of the Title is a first lien on the Collateral.
4. The Plaintiff should have possession of the mobile home described herein, and if necessary, the Sheriff of the county in which the Mortgaged Property and Collateral are located shall place the Plaintiff in possession of said mobile home upon service of this Master's Order and Judgment of Foreclosure and Sale, without further notice or hearing.
5. I also conclude that the amount of attorney fees requested by the Plaintiff is reasonable.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. There is due to the Plaintiff on the obligation and Mortgage set forth in the complaint the sum of seventy-three thousand two hundred twenty and 76/100 (\$73,220.76) Dollars representing the "Total Debt" due Plaintiff as set out in paragraph fifteen hereinabove, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof. The amount due in the preceding paragraph (the "Total Debt" as set forth in paragraph hereinabove, and later accrued interest on the principal) shall constitute the total judgment debt due the Plaintiff and shall bear interest hereafter at the

rate of 9.77% per annum.

2. That Plaintiff be allowed permanent possession of the 1997 Fleetwood mobile home, Serial No. NCFLT69AB13150WP12 with the right to dispose of the Collateral in accordance with §36-9-610, *South Carolina Code of Laws*, 1976 (as amended). If necessary, the Sheriff of the county in which said mobile home is located shall place the Plaintiff in possession of said mobile home upon service of this Master's Order and Judgment of Foreclosure and Sale, without further notice or hearing.
3. That the Defendant(s) liable for the aforesaid mortgage debt shall on or before the date of sale of the Mortgaged Property and Collateral hereinafter described, pay to the Plaintiff, or Plaintiff's attorney, the amount of Plaintiff's 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 Property and Collateral described in the Complaint, as hereinafter set forth, be sold by the Master in Equity at public auction, at the Spartanburg County Courthouse, in the City of Spartanburg, County and State aforesaid, on some convenient sales day hereinafter (and should the regular day of judicial sales fall on a legal holiday), on the following terms, that is to say:
 - (a) FOR CASH: the Master in Equity will require a deposit of five (5%) percent of the amount of the bid (in cash or equivalent), by 5:00 p.m. on the day of the sale and bid or immediately if directed by the Judge, same to be applied on the purchase money 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 of Plaintiff's debt.
 - (b) Interest on the bid shall be paid to the day of compliance at the rate of 9.77% per annum.

- (c) The sale shall be subject to taxes and assessments, existing easements and easements and restrictions of record, and any other senior encumbrances.
 - (d) Purchaser to pay for deed stamps and cost of recording deed.
5. If Plaintiff be the successful bidder at the said sale, for a sum, not exceeding the amount of costs, disbursements, expenses and indebtedness of Plaintiff in full, Plaintiff may pay to the Master in Equity only the amount of costs, disbursements and expenses crediting the balance of the bid on Plaintiff's indebtedness.
 6. If the Plaintiff does not waive a personal or a deficiency judgment at or prior to sale, the sale will remain open for thirty (30) days pursuant to S.C. Code Ann. Section 15-39-720 (1976).
 7. 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 Mortgaged Property and Collateral 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 may advertise the Mortgaged Property and Collateral 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 full compliance shall be secured.
 8. That the Master in Equity will apply the proceeds of sale as follows:
 - FIRST: To the payment of the amount of the costs, disbursements, and expenses of this action.
 - NEXT: To the payment of the Plaintiff or the Plaintiff's attorney, of the amount of Plaintiff's debt and interest, including attorney fees, or so much thereof as the purchase

money will pay on the same; if the proceeds of the sale be insufficient to pay the amounts herein before authorized to be paid out of said proceeds, the parties hereto entitled to such deficiency have monetary judgment against Mr. McClary pursuant to S.C. Code Ann. Sec. 29-3-660 (1976) and such judgment will be entered without further notice of hearing.

NEXT: That any surplus be held pending further Order of the Court.

IT IS FURTHER ORDERED that in the event the successful bidder is other than the Defendant(s) in possession herein, the Sheriff of Spartanburg County is ordered and directed to eject and remove the Defendant(s) from the Mortgaged Property and Collateral sold, together with all personal property located thereon, and put the successful bidder or his assigns in such peaceable possession.

IT IS FURTHER ORDERED that each Defendant, including those subordinate lien holders, if any name in Paragraph seventeen, hereinabove, 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 Property and Collateral so sold, or any part thereof.

IT IS FURTHER ORDERED that, pursuant to South Carolina 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 Mesne Conveyance in the name of the owner of record of Mortgaged Property immediately prior to execution of the deed, as well as in the name of the Master in Equity, who executes such deed as grantor.

1. 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 Supplemental Order to evidence additional debt incurred if the sale of the Mortgaged Property and Collateral is delayed by the filing of a bankruptcy petition, transfer of service of the Note and Mortgage

by the Plaintiff or an attempt of the parties to reach a settlement, the issuance of a Supplemental Order to correct a harmless error in the action that does not substantially affect the rights of the parties, the issuance of a Writ of Assistance and disposing of any surplus funds pursuant to Rule 71(c), South Carolina Rules of Civil Procedure.

2. The following is a description of the Mortgaged Property and Collateral herein ordered to be sold:

All that piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Spartanburg, and being shown and designated as Lot No. 62 on plat entitled SOUTH TYGER CROSSING dated June 12, 1997, by Huskey & Huskey, Inc., and recorded in Plat Book 138, Page 406, RMC Office for Spartanburg County. Reference is hereby made to said plat for a more detailed metes and bounds description. Subsequently, a Corrective Plat was recorded on February 25, 1998, in Book 140 at Page 472.

This being the identical property conveyed to Dewayne P. McClary by deed from South Tyger Development, LLC, dated August 20, 1997 recorded August 21, 1997 in the Office of the Spartanburg County Register in Book 66-K Page 249.

Subsequently, a Corrective Title to Real Estate was executed on March 26, 1998, and recorded on March 31, 1998, in Book 67-P at Page 925.

Together with that certain 1997 Fleetwood mobile home, serial number NCFLT69AB13150WP12.

Property Address: 251 Lindsey Ridge, Lyman, SC 29365

TMS#: 5-10-00-274.00 (land and mobile home)

IT IS FURTHER ORDERED that if the Plaintiff or the Plaintiff's representative does not appear at the scheduled sale of the above-referenced Mortgaged Property and Collateral, then the sale of the Mortgaged Property will be null, void and of no force and effect. In such event, the sale will be rescheduled for the next available sale day.

Gordon G. Cooper
Spartanburg County Master in Equity

Spartanburg, South Carolina

_____, 2009