

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Bank of America, N.A.,

PLAINTIFF,

vs.

Arlene H. Milligan individually and as Personal Representative for the Estate of Alice Arlene Milligan, a/k/a Alice A. Milligan, Lewis E. Milligan, Bank of America, N.A., and Roy Allen Bussey, Jr.,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

MASTER'S ORDER AND
JUDGMENT OF FORECLOSURE AND
SALE

(NON-JURY MORTGAGE
FORECLOSURE)

C/A NO: 2011-CP-42-3719

DEFICIENCY WAIVED

F11-04307

TO:

Korn Law Firm, P.A.
Attorney for Plaintiff

The loan is not subject to the Supreme Court of South Carolina's Administrative Order (Order No. 2011-05-02-01) because the subject property is not an owner -occupied dwelling as defined in Paragraph A.(3) of said Order.

Pursuant to Rule 53 SCRPC, 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 cause.

Pursuant to the said Order of Reference a hearing was held, attended by the attorneys of record, 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. The Lis Pendens was filed on August 26, 2011.
2. The Summons and Complaint were filed on August 26, 2011, and amended Summons and Complaint were filed on September 27, 2011.
3. Service was made upon the Defendant(s) named in this Report as is shown by the Proof(s) of Service filed herein.
4. That the Defendants Arlene H. Milligan individually and as Personal Representative for the Estate of Alice Arlene Milligan, a/k/a Alice A. Milligan, Lewis E. Milligan, Bank of America, N.A. , and Roy Allen Bussey, Jr. are in default as shown by Affidavit on file herein.
5. The Defendants and/or all attorneys of record were notified of the time, date, and place of the hearing in this matter.

6. 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.

7. For value received, Alice A. Milligan made, executed and delivered a Note dated May 2, 2007, promising thereby to pay to the order of Bank of America, N.A. the sum of Eighty-Nine Thousand And 00/100 Dollars (\$89,000.00), with interest at 5.750 percent per annum. 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, the said Alice A. Milligan made, executed and delivered to Bank of America, N.A. a Mortgage in writing, dated May 2, 2007, covering real property in Spartanburg County, which is the same as that described in the Complaint. The mortgage was filed on May 3, 2007, and is of record in the Office of the Register of Deeds for Spartanburg County in Mortgage Book 3384 at page 319.

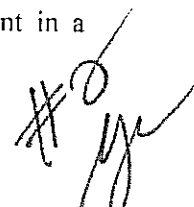
9. The above referenced instrument constitutes a purchase money mortgage with the proceeds of the loan being used to purchase the property above described.

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

11. 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:

1. Lis Pendens
2. Summons and Complaint
3. Affidavit of Default
4. Order of Reference
5. Notice of Hearing
6. Proposed Final Decree
7. Notice of Sale
8. Transcript of Testimony
9. Other documents as applicable pertaining to service and finalization of this action.

Additionally, 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 has had telephone conversations with the defendant(s), if requested. Future duties include forwarding copies of the Decree to the defendant(s), advising the defendant(s) of the date that the property will be sold, arranging and coordinating the amount to be bid by plaintiff, representation of plaintiff at sale and preparation of after sale documentation as required. In light of the potential liabilities inherent in a

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property matter, the attendant responsibilities and the size of the mortgage debt, I find that the attorney fees requested by the plaintiff in the amount of one thousand three hundred twenty-five and 00/100 (\$ 1,325.00) are reasonable.

12. 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, secured by the Note and Mortgage, is as follows:

(a)	Principal due as of 8/1/2010	\$ 85,248.09
(b)	Interest from 7/1/2010 through 1/20/2012 at 5.75%	\$ 7,607.10
(c)	Escrow adjustments (debits or credits)	\$ 3,096.81
	Insurance \$2,395.00	
	Taxes \$701.81	
(d)	Late charges	\$ 51.94
(e)	Property Inspections	\$ 378.00
(f)	Property maintenance (preservation)	\$ 705.00
(g)	Costs of Collections Prior to Hearing	\$ 860.29
(h)	Other charges	\$ 30.00
(i)	Attorney Fees	\$ 1,325.00
	TOTAL DEBT secured by Note and Mortgage, including interest to date shown	\$ 99,302.23

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 rate of 5.750 percent per annum (pursuant to the terms of the Note and Mortgage) on the judgment debt 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.

AS FOR THE SECOND CAUSE OF ACTION
(REFORMATION OF MORTGAGE)

13. That it was the mutual intent of the parties herein that the legal description of the subject mortgage specify the portion of Lot 76 intended to be encumbered and conveyed.

14. That due to a mutual mistake by the parties, the legal description of the mortgage executed to secure the subject note inadvertently fails to specify the portion of Lot 76 intended to be encumbered and conveyed.

15. That Plaintiff seeks that the above described mortgage be reformed to designate and encumber the property shown and designated as Lot No.'s 74, 75 and the adjoining 12 1/2 feet of 76.

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16. Plaintiff would show that irreparable harm and prejudice will be suffered by Plaintiff if the mortgage is not reformed as the present collateral under the mortgage is without sufficient equity to secure the debt.

17. Wherefore Plaintiff does hereby move for a reformation of the mortgage at the hearing to correct the legal

description to read as follows:

ALL THOSE CERTAIN pieces, parcels or lots of land, with improvements thereon, lying, situate and being in the State and County aforesaid, being shown and designated as Lot No.'s 74, 75 and the adjoining 12 1/2 feet of 76, Park Hills Subdivision, Block G, upon a plat recorded in Plat Book 23, at Pages 429-456, Register of Deeds Office for Spartanburg County, South Carolina said lots having parallel side lines 160 feet from Victoria Road to a 20' foot alley and fronting on Victoria Road a distance of 112 1/2 feet. The aforesaid plat is hereby specifically made for a more detailed description of the property.

A THIRD CAUSE OF ACTION
(REFORMATION OF DEED)

19. That it was the mutual intent that, in referencing the subject property, the legal description of Deed dated May 2, 2007 and recorded May 3, 2007, in Deed Book 88 L at Page 916 specify the portion of Lot 76 intended to be encumbered and conveyed.

20. That the legal description of said Deed inadvertently fails to specify the portion of Lot 76 intended to be encumbered and conveyed.

21. Roy Allen Bussey, Jr. is named a Defendant as Plaintiff is seeking to have the aforementioned Deed reformed to correct the legal description. Roy Allen Bussey, Sr. is now deceased and, therefore, his life estate interest in the subject property is now extinguished.

22. That Plaintiff seeks that the aforementioned Deed be reformed to designate the property intended to be conveyed.

23. Plaintiff would show that irreparable harm and prejudice will be suffered by Plaintiff if the aforementioned Deed is not reformed.

24. Wherefore Plaintiff does hereby move for a reformation of the aforementioned Deed at the hearing to reform the legal description as it pertains to the subject property to read as follows:

ALL THOSE CERTAIN pieces, parcels or lots of land, with improvements thereon, lying, situate and being in the State and County aforesaid, being shown and designated as Lot No.'s 74, 75 and the adjoining 12 1/2 feet of 76, Park Hills Subdivision, Block G, upon a plat recorded in Plat Book 23, at Pages 429-456, Register of Deeds Office for Spartanburg County, South Carolina said lots having parallel side lines 160 feet from Victoria Road to a 20' foot alley and fronting on Victoria Road a distance of 112 1/2 feet. The aforesaid plat is hereby specifically made for a more detailed description of the property.

25. That the Plaintiff requests that this Court issue an Order extinguishing any interest that Roy Allen Bussey, Jr. may claim to have in the subject property and declaring that Arlene H. Milligan and Lewis E. Milligan have ownership interest in the subject property.

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26. That upon information and belief, certain costs for inspecting and securing the subject property have been incurred by the Plaintiff as a result of this delinquency and Plaintiff is informed and believes it is entitled to reimbursement for such charges, if any.

27. The notice of consumer's right to cure, as contemplated under S.C. Code Sections 37-5-110 and 37-5-111, has been given or is not required, and all conditions precedent to the acceleration of the debt and foreclosure of the mortgage have been performed or have occurred.

28. That the Defendant, Bank of America, N.A., is made a party by virtue of a Notice of Creditor's Claim filed against the Estate of Alice Arlene Milligan, a/k/a Alice A. Milligan, dated September 3, 2010 and recorded September 9, 2010, in the amount of \$12,327.84.

29. That the Plaintiff specifically waives its rights to a deficiency judgment in the event the sale of the real estate herein does not yield a sum sufficient to satisfy all indebtedness due to the Plaintiff, including costs and attorney fees.

30. Since a personal or deficiency judgment is being waived, the bidding will not remain open but compliance with the bid may be made immediately.

31. That the servicer is participating in the Home Affordable Modification Program (HMP). The loan is not subject to modification under the HMP because the borrower is deceased and the subject property is vacant. The loan is not subject to the Supreme Court of South Carolina's Administrative Order (Order No. 2011-05-02-01) because the subject property is not an owner-occupied dwelling as defined in Paragraph A.(3) of said Order.

CONCLUSION OF LAW

I, therefore, conclude as follows:

1. The Plaintiff should have judgment of foreclosure of the mortgage and the mortgaged property should be ordered sold at public auction after due advertisement.

2. That Plaintiff is entitled to the relief sought in its second and third causes of action.

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 Ninety-Nine Thousand Three Hundred Two And 23/100 Dollars (\$99,302.23) representing the "Total Debt" due Plaintiff as set forth supra, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof.

2. The amount due in the preceding paragraph (the "Total Debt" as set forth supra 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 5.750% percent per annum.

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3. 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.

4. That the Defendants liable for the aforesaid mortgage debt shall, on or before the date of sale of the property 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.

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 Master in Equity at public auction at the Spartanburg County Courthouse in Spartanburg, South Carolina, on some convenient sales day hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in the 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 percent (5%) 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 shall be paid to the day of compliance at the rate of 5.750 percent.

C. The sale shall be subject to taxes and assessments, existing easements and easements and restrictions of record.

D. The above referenced instrument constitutes a purchase money mortgage with the proceeds of the loan being used to purchase the property above described.

E. Purchaser to pay for Deed Stamps and costs of recording the Deed and transfer taxes on the Deed. Purchaser will pay for any statutory commission on sale from the proceeds of the sale.

6. If Plaintiff be the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of the 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.

7. Personal nor deficiency judgment having been waived, the bidding will not remain open after the date of sale and compliance with the bid may be made immediately.

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8. Since a personal or deficiency judgment is being waived, the bidding will not remain open but compliance with the bid may be made immediately.

9. That the 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. 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 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.

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

FIRST: To payment of the amount of the costs and expenses of this action, including any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court.

NEXT: To the payment to the Plaintiff or Plaintiff's attorney, of the amount of Plaintiff's debt and interest, so much thereof as the purchase money will pay on the same.

NEXT: Any surplus will be held pending further order of the court.

11. It is further ORDERED, ADJUDGED AND DECREED that in the event the successful bidder to whom the deed of conveyance has been issued subsequent to the sale 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 to whom the deed of conveyance has been issued 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. All valid tenant rights shall be protected.

12. And it is further ORDERED, ADJUDGED AND DECREED that each Defendant and all persons whomsoever claiming under him, her or them, 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.

13. And it is further ORDERED, ADJUDGED AND DECREED that any prior lien that has been paid in full is hereby satisfied and cancelled of record.

14. IT IS FURTHER ORDERED that 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 titleholder of the mortgaged property at the time of filing of the Notice of Pendency of the within action, and the name of the Grantee, and the Register of Deeds is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said Deed.

15. The 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.

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16. Upon issuance of a Master in Equity Report on Sale and Disbursements, the Register of Deeds is directed to release of record the mortgage lien being foreclosed, which mortgage lien is described as follows:

That Mortgage originally given to Bank of America, N.A. by Alice A. Milligan, dated 5/2/2007 and recorded 5/3/2007, in Mortgage Book 3384 at page 319.

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

LEGAL DESCRIPTION AND PROPERTY ADDRESS:

ALL THOSE CERTAIN pieces, parcels or lots of land, with improvements thereon, lying, situate and being in the State and County aforesaid, being shown and designated as Lot No.'s 74, 75 and the adjoining 12 1/2 feet of 76, Park Hills Subdivision, Block G, upon a plat recorded in Plat Book 23, at Pages 429-456, Register of Deeds Office for Spartanburg County, South Carolina said lots having parallel side lines 160 feet from Victoria Road to a 20' foot alley and fronting on Victoria Road a distance of 112 1/2 feet. The aforesaid plat is hereby specifically made for a more detailed description of the property.

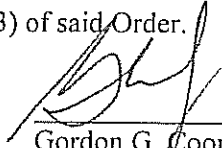
THIS BEING the same property conveyed unto Alice A. Milligan by virtue of a Deed from Roy Allen Bussey, Jr. and Roy Allen Bussey, Sr., dated May 2, 2007, and recorded May 3, 2007, in Deed Book 88 L and Page 916, in the Office of the Register of Deeds for Spartanburg County, South Carolina.

125 E. Victoria Road, Spartanburg, SC 29301

TMS 7-12-13-140.00

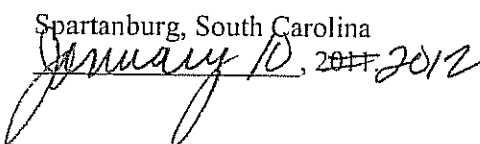
18. IT IS FURTHER ORDERED that if the Plaintiff or the Plaintiff's representative does not appear at the scheduled sale of the above-described property, then the sale of the property will be null, void and of no force and effect. In such event, the sale will be rescheduled for the next available sales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

19. IT IS FURTHER ORDERED that the servicer is participating in the Home Affordable Modification Program (HMP). The loan is not subject to modification under the HMP because the borrower is deceased and the subject property is vacant. The loan is not subject to the Supreme Court of South Carolina's Administrative Order (Order No. 2011-05-02-01) because the subject property is not an owner-occupied dwelling as defined in Paragraph A.(3) of said Order.



Gordon G. Cooper
Master in Equity
For Spartanburg County

Spartanburg, South Carolina


January 10, 2012

