

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )

IN THE COURT OF COMMON PLEAS  
C. A. No: 2009-CP-42-4179

Thermal Belt Habitat  
for Humanity, Inc. )  
Plaintiff, )

vs. )

Timothy Earl McSwain and )  
Jamie Lynn McSwain, )  
Defendants. )

**JUDGMENT OF FORECLOSURE  
AND FORECLOSURE SALE**

**(DEFICIENCY WAIVED)**

**FILED**  
**COURT OF COMMON PLEAS**  
**SPARTANBURG COUNTY**  
**2009 OCT 15 AM 11:48**  
**MARC KITCHENS**

Pursuant to Rule 53 SCRPC, the above captioned matter was referred to the undersigned Master-In-Equity to make appropriate findings of fact and conclusions of law with authority to enter a final judgment in the cause. Any appeal from the final judgment entered by the Master-In-Equity shall be directly to the Supreme Court.

Pursuant to the Order of Reference, a hearing was held before the undersigned Master-in-Equity on the 15<sup>th</sup> day of October, 2009, attended by the Plaintiff, and its attorney, H. Lloyd Howard. Based upon the testimony taken, and the evidence presented the Court finds and concludes as follows:

**FINDINGS OF FACT**  
**(Foreclosure of First Mortgage)**

1. The Lis Pendens, Summons and Complaint were filed herein on July 30, 2009.
2. The Lis Pendens, Summons and Complaint were duly served on Defendant, Jamie Lynn McSwain, who accepted service thereof and retained a copy on August 11, 2009 and the Defendant, Timothy Earl McSwain was personally served by the Spartanburg County Sheriff's Office on August 17, 2009.

3. The Plaintiff, Thermal Belt Habitat for Humanity, Inc. is a non-profit corporation organized and existing under the laws of the State of North Carolina and is authorized to transact business in Spartanburg County, South Carolina.

4. Defendants, Timothy Earl McSwain and Jamie Lynn McSwain, are citizens and residents of Spartanburg County, South Carolina.


5. The Defendants, Timothy Earl McSwain and Jamie Lynn McSwain, are in default as shown by the Affidavit of Default and the Entry of Default 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 and any amendments thereto.

6. All parties were notified of the time, date, and place of the hearing in this matter.

7. The real property which is the subject of this action is located in Spartanburg County, South Carolina.

8. That on April 15, 2003 the Defendants, Timothy Earl McSwain and Jamie Lynn McSwain, for value received, executed and delivered to Thermal Belt Habitat for Humanity, Inc., a promissory note in writing, by which, according to the terms and conditions set out therein, said Defendants promised to pay to Thermal Belt Habitat for Humanity, Inc. the sum of Sixty-two Thousand Four Hundred Thirty-one and 09/100 Dollars (\$62,431.09), in monthly payments of Two Hundred Eighty-seven and 00/100 Dollars (\$287.00) per month commencing on March 1, 2003, and continuing on the first day of each month thereafter until paid in full.

9. In order to better secure the payment of the aforesaid note and debt, in accordance with the terms and conditions thereof, the said Defendants, Timothy Earl McSwain and Jamie Lynn McSwain, did execute and deliver on December 9, 2004 that certain Mortgage of Real

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Estate dated April 15, 2003, and recorded on April 18, 2003, in Mortgage Book 2935 at Page 192 in the Register of Deeds Office for Spartanburg County, South Carolina, covering the following described property:

**All that certain piece, parcel, or lot of land in the County of Spartanburg, State of South Carolina, containing 0.36 acres more or less shown as Lot #15 Shamrock Park Subdivision on that certain plat of survey entitled "Habitat For Humanity Subdivision for City of Landrum, SC" made by B.P. Barber & Associates, Inc. dated November 30, 1999 recorded in Plat Book 149 at Page 284 in the Register of Deeds Office for Spartanburg County, South Carolina. For a more complete and particular description of said property, reference is hereby made to the aforesaid plat.**

**The above described property is conveyed subject to covenants and restrictions executed by Thermal Belt Habitat for Humanity, Inc. and recorded in Deed Book 73-Y at Page 587 in the Register of Deeds Office for Spartanburg County.**

**Block Map # 1-08-01-003.21**

**This being the same property conveyed to Timothy Earl McSwain and Jamie Lynn McSwain by Deed of Thermal Belt Habitat For Humanity, Inc. recorded April 18, 2003, in Deed Book 77-T at Page 402 in the Spartanburg County Register of Deeds Office.**

10. The aforesaid Mortgage constitutes a first lien upon the subject property.

11. According to the terms and conditions of the aforesaid note and mortgage, it is provided that in the event of default in the payment of any portion of principal and interest due thereunder, all sums then owing by the Mortgagor(s) to the Mortgagee, at the option of the Mortgagee shall become immediately due and payable and the aforesaid mortgage may be foreclosed and if the debt is placed in the hands of an attorney for collection by suit or otherwise, all costs and expenses incurred by the Mortgagee and a reasonable attorney's fee shall thereupon become due and payable immediately as a part of the debt secured thereby.



12. The Defendants, Timothy Earl McSwain and Jamie Lynn McSwain, have defaulted in the payment of the note and mortgage given to Thermal Belt Habitat for Humanity, Inc., by failing to pay Plaintiff, on demand, the principal due pursuant to the Note and Mortgage and said Defendants are therefore in default and Plaintiff has declared the entire balance of principal to be immediately due and payable.

13. The aforesaid Mortgage provides for the collection of reasonable attorneys fees and costs if the Mortgage is placed in the hands of an attorney for collection. The Court finds that the sum of Four Thousand Eight Hundred and no/100 Dollars (\$4,800.00) is a reasonable fee to allow as attorneys 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 aforesaid 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 a reasonable time.

14. Demand has been made upon the Defendants, Timothy Earl McSwain and Jamie Lynn McSwain, to pay the amounts due under the aforesaid Note and Mortgage, but the Defendants have failed or refused to pay the same and there is due and payable on Plaintiff's Note and First Mortgage the following amounts:

- (a) Principal Due.....\$ 61,193.00
  - (b) Interest from January 1, 2009 at the rate of 8% per annum.....\$ 3,862.66
  - (c) Costs of Collection prior to hearing (Filing Fees, Service etc.)..... \$ 320.54
  - (d) Attorneys Fees.....\$ 4,800.00
- Total Debt secured by Note and First Mortgage as of 10/15/09.....\$ 70,176.20

Interest for the period from the date shown in item (b) above through the date of this judgment at the above stated rate to be added to the above stated "Total Debt" to compromise the amount of the judgment debt entered herein and interest after the date of judgment at the rate of 12% per annum on the judgment debt should be added to such judgment debt to compromise the amount of Plaintiff's debt secured by the First Mortgage through the date to which such interest is computed.

15. The Plaintiff seeks to have its mortgage foreclosed, the premises sold, any equity of redemption barred and the proceeds applied toward the payment of the debt owed Plaintiff.

16. The Note and First Mortgage which are the subject of this foreclosure action are not owned or guaranteed by Fannie Mae or Freddie Mac and are not owned, guaranteed, or managed by a servicer who has signed an agreement to participate in the Home Affordable Modification Program, and therefore are not subject to modification under the Homeowner Affordability and Stability Plan, the Home Affordable Modification Program, and/or the United States Treasury Supplemental Directive 09-01 (collectively referred to hereafter as "HMP").

17. The Plaintiff has waived any demand for a deficiency judgment against Defendants, Timothy Earl McSwain and Jamie Lynn McSwain, in the event the sale of the real property described herein does not yield a sum sufficient to satisfy all indebtedness due unto the Plaintiff, including costs and attorneys fees.

**(Foreclosure of Second Mortgage Lien)**

18. That on or about April 15, 2003 the Defendants, Timothy Earl McSwain and Jamie Lynn McSwain, for value received, executed and delivered to Thermal Belt Habitat for Humanity, Inc., a second promissory note in writing, by which, according to the terms and

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conditions set out therein, said Defendants promised to pay to Thermal Belt Habitat for Humanity, Inc. the sum of Ten Thousand and no/100 Dollars (\$10,000.00).

19. In order to better secure the payment of the aforesaid note and debt, in accordance with the terms and conditions thereof, the said Defendants, Timothy Earl McSwain and Jamie Lynn McSwain, did execute and deliver on April 15, 2003 that certain Second Mortgage of Real Estate dated April 15, 2003, and recorded on April 18, 2003, in Mortgage Book 2935 at Page 196 in the Register of Deeds Office for Spartanburg County, South Carolina, covering the following described property:

**All that certain piece, parcel, or lot of land in the County of Spartanburg, State of South Carolina, containing 0.36 acres more or less shown as Lot #15 Shamrock Park Subdivision on that certain plat of survey entitled "Habitat For Humanity Subdivision for City of Landrum, SC" made by B.P. Barber & Associates, Inc. dated November 30, 1999 recorded in Plat Book 149 at Page 284 in the Register of Deeds Office for Spartanburg County, South Carolina. For a more complete and particular description of said property, reference is hereby made to the aforesaid plat.**

**The above described property is conveyed subject to covenants and restrictions executed by Thermal Belt Habitat for Humanity, Inc. and recorded in Deed Book 73-Y at Page 587 in the Register of Deeds Office for Spartanburg County.**

**Block Map # 1-08-01-003.21**

**This being the same property conveyed to Timothy Earl McSwain and Jamie Lynn McSwain by Deed of Thermal Belt Habitat For Humanity, Inc. recorded April 18, 2003, in Deed Book 77-T at Page 402 in the Spartanburg County Register of Deeds Office.**

20. According to the terms and conditions of the aforesaid note and mortgage, it is provided that in the event of default in the payment of any portion of principal and interest due thereunder, all sums then owing by the Mortgagor(s) to the Mortgagee, at the option of the



Mortgagee shall become immediately due and payable and the aforesaid mortgage may be foreclosed and if the debt is placed in the hands of an attorney for collection by suit or otherwise, all costs and expenses incurred by the Mortgagee and a reasonable attorney's fee shall thereupon become due and payable immediately as a part of the debt secured thereby.

21. The Defendants, Timothy Earl McSwain and Jamie Lynn McSwain, have defaulted in the payment of the note and second mortgage given to Thermal Belt Habitat for Humanity, Inc., by failing to pay Plaintiff, on demand, the principal due pursuant to the note and second mortgage and said Defendants are therefore in default and Plaintiff has declared the entire balance of principal to be immediately due and payable.

22. The aforesaid Second Mortgage provides for the collection of reasonable attorneys fees and costs if the Mortgage is placed in the hands of an attorney for collection. The Court finds that the sum of One Thousand and no/100 Dollars (\$1,000.00) is a reasonable fee to allow as attorneys 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 aforesaid 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 a reasonable time.

23. Demand has been made upon the Defendants, Timothy Earl McSwain and Jamie Lynn McSwain, to pay the amounts due under the aforesaid Note and Second Mortgage, but the Defendants have failed or refused to pay the same and there is due and payable on Plaintiff's Note and Second Mortgage the following amounts:

(a) Principal Due.....\$ 10,000.00


- (b) Interest from January 1, 2009 at the rate of 8% per annum.....\$ 631.00
- (c) Attorneys Fees.....\$ 1,000.00
- Total Debt secured by Note and Second Mortgage as of 10/15/09.....\$ 11,631.20

Interest for the period from the date shown in item (b) above through the date of this judgment at the above stated rate to be added to the above stated "Total Debt" to compromise the amount of the judgment debt entered herein and interest after the date of judgment at the rate of 12% per annum on the judgment debt should be added to such judgment debt to compromise the amount of Plaintiff's debt secured by the Second Mortgage through the date to which such interest is computed.

24. Plaintiff seeks to have its Second Mortgage foreclosed, the premises sold, any equity of redemption barred and the proceeds applied toward the payment of the debt owed Plaintiff.

25. The Note and Second Mortgage which are the subject of this foreclosure action are not owned or guaranteed by Fannie Mae or Freddie Mac and are not owned, guaranteed, or managed by a servicer who has signed an agreement to participate in the Home Affordable Modification Program, and therefore are not subject to modification under the Homeowner Affordability and Stability Plan, the Home Affordable Modification Program, and/or the United States Treasury Supplemental Directive 09-01 (collectively referred to hereafter as "HMP").

26. The Plaintiff has waived any demand for a deficiency judgment against Defendants, Timothy Earl McSwain and Jamie Lynn McSwain, in the event the sale of the real property described herein does not yield a sum sufficient to satisfy all indebtedness due unto



the Plaintiff, including costs and attorneys fees.

**CONCLUSIONS OF LAW**

1. The Plaintiff and Defendants are properly before the Court and the Court has jurisdiction over the parties and of the subject matter herein.
2. It appears from the evidence presented that the Plaintiff is entitled to have judgment of foreclosure of the Notes and Mortgages referenced herein and that the real property described therein should be ordered sold at public auction after due advertisement.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:**

1. That the Plaintiff's Mortgages be and hereby is declared to be a first and second lien on the subject property and that the Plaintiff be and hereby are granted judgment of foreclosure for the amount(s) found to be due and owing thereon, together with any taxes or insurance premiums which may be due, with a reasonable sum for attorney's fees and for the costs of this action;
2. That the amount due to the Plaintiff on its Notes and Mortgages set forth in the Complaint is the sum of Eighty-one Thousand Eight Hundred Seven and 40/100 Dollars (\$81,807.40) representing the Total Debt due Plaintiffs as set out in paragraphs 14 and 23 supra, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof.
3. That the Defendants, Timothy Earl McSwain and Jamie Lynn McSwain, who are liable for the aforesaid Mortgage debt shall on or before the date of sale of the property hereinafter describe, pay to the Plaintiff or Plaintiff's attorney the amount of the aforesaid debt, together with the costs, attorney's fees and disbursements of this action.
4. That in default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, and set forth herein above, shall be sold by the undersigned

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Master-In-Equity at public auction, at the Spartanburg County Courthouse, County and State aforesaid, on some convenient sales day hereafter (and should the regular day of judicial sales fall on a legal holiday, then in such event, the sales day shall be on Tuesday next succeeding such holiday), on the following terms:

- a. The undersigned Master In Equity will require a deposit of 5% of the amount of the bid (in cash or equivalent) 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 12%;
- 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 the deed.

5. If Plaintiff is the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness as set forth in paragraphs 14 and 23 above, Plaintiff may pay the undersigned Master In Equity only the amount of the costs and expenses crediting the balance of the bid on the indebtedness owed on Plaintiff's Notes and Mortgages.

6. The Plaintiff has waived its demand for a deficiency judgment against the Defendants for any deficiency which exists after the sale of the aforesaid real property. .

7. 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 real property 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

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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 said real property 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.

8. The property shall be sold under the direction of the Court, the equity of redemption be barred, and the proceeds of sale be applied as follows:

(a) First, to the payment of the costs and expenses of the within action and sale;

(b) Second, to the payment and discharge of the amount due under Plaintiff's Notes and Mortgages, together with attorney's fees and costs, and

(c) Third, the surplus, if any, be distributed according to law;

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Defendants named herein, and all persons whosoever claiming under them, be forever barred and foreclosed of all right, title, interest, claim, lien and equity of redemption in the mortgaged premises or any part thereof;

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that, pursuant to S.C. Code Ann. §30-9-31 (Supp. 1987) the deed of conveyance made pursuant to said sale shall contain the names of only the first-named Plaintiff and the first-named Defendants who were the titleholder(s) of the mortgaged property at the time of the filing of the lis pendens, and the name of the Grantee. Said deed of conveyance shall be indexed in the Grantor index by the Spartanburg County Register of Deeds in the name of the owner of record of the 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.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Purchaser be let

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into possession of the premises on production of the deed from the Master-In-Equity and the Sheriff of Spartanburg County, South Carolina, is hereby empowered and authorized to place the successful purchaser at the foreclosure sale in possession of the property described herein should the same become necessary.

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, any issues concerning the appraisal statutes, and depositing of any surplus funds pursuant to Rule 71 ( c), SCRPC.

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

**All that certain piece, parcel, or lot of land in the County of Spartanburg, State of South Carolina, containing 0.36 acres more or less shown as Lot #15 Shamrock Park Subdivision on that certain plat of survey entitled "Habitat For Humanity Subdivision for City of Landrum, SC" made by B.P. Barber & Associates, Inc. dated November 30, 1999 recorded in Plat Book 149 at Page 284 in the Register of Deeds Office for Spartanburg County, South Carolina. For a more complete and particular description of said property, reference is hereby made to the aforesaid plat.**

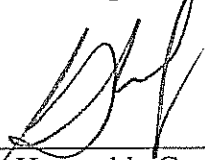
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Block Map # 1-08-01-003.21

This being the same property conveyed to Timothy Earl McSwain and Jamie Lynn McSwain by Deed of Thermal Belt Habitat For Humanity, Inc. recorded April 18, 2003, in Deed Book 77-T at Page 402 in the Spartanburg County Register of Deeds Office.

AND IT IS SO ORDERED.

*October 15*, 2009  
Spartanburg, South Carolina

  
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The Honorable Gordon G. Cooper  
Master in Equity for Spartanburg County

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
2009 OCT 15 AM 11:49  
MARC KITCHENS

