

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 ) Civil Action No.: 09-CP-42-6244  
COUNTY OF SPARTANBURG )

South Carolina State Housing Finance )  
and Development Authority, )

Plaintiff, )

vs. )

Joseph F. Colbert and Tracie L. )  
Colbert, )

Defendants )

**MASTER'S ORDER**

2010 FEB -4 PM 5:11  
CLERK OF COURT  
SPARTANBURG COUNTY

\_\_\_\_\_  
(Deficiency Demanded)

To: Warren R. Herndon, Jr., Esquire

Pursuant to Rule 53, South Carolina Rules of Civil Procedure, 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 Supreme Court.

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

**FINDINGS**

1. The Lis Pendens was filed on November 5, 2009.
2. The Summons and Complaint were filed on November 16 2009.
3. Service was made upon the defendants named in this Report as is shown by the proofs of service filed herein.
4. The defendants, Joseph F. Colbert and Tracie L. Colbert are in default as shown by affidavits on file herein.

5. According to the affidavit filed herein, no defendant(s) in default are 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.

6. All Defendants in default and all attorneys of record and defendants pro se were notified of the time, date, and place of hearing in this matter.

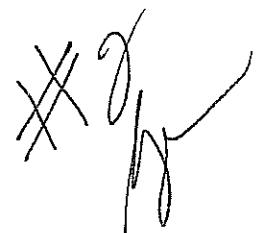
7. For value received, Joseph F. Colbert and Tracie L. Colbert made, executed, and delivered a certain Promissory Note dated February 28, 2007 promising thereby to pay to the order of Citizens First Mortgage the sum of \$82,353.00 Dollars with interest at 5.875% per annum as stated in the Note. Other 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 Joseph F. Colbert and Tracie L. Colbert made, executed and delivered to Citizens First Mortgage a mortgage in writing dated February 28, 2007 covering real property in Spartanburg County, which is the same as that described in the Complaint. The mortgage was filed on March 6, 2007 and is of record in the office of the ROD for Spartanburg County in Book 3846 at Page 149. Said mortgage was assigned to the Plaintiff in Book 3846 at Page 164.

9. This mortgage constitutes a first lien on the mortgaged premises and it is a purchase money mortgage.

10. The Plaintiff in this action is the owner and holder of the note and mortgage it is seeking to foreclose.

11. The title holders of record in and to the subject property as of the filing of the lis pendens in this action are Joseph F. Colbert and Tracie L. Colbert who are the original mortgagors.

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South Carolina Rules of Civil Procedure, but reserved the right to waive same at any time prior to sale.

16. The Plaintiff, South Carolina State Housing Finance and Development Authority, is also the owner of that certain Second Mortgage given by Joseph F. Colbert and Tracie L. Colbert to Citizens First Mortgage, to secure a Note in the original principal amount of \$2,000.00, said Second Mortgage being dated February 28, 2007, and recorded March 6, 2007 in Book 3846 at Page 165; by assignment dated February 28, 2007, recorded March 6, 2007 in Book 3846 at Page 170, assigned and transferred said Second Mortgage and the Note secured thereby to the Plaintiff South Carolina State Housing Finance and Development Authority; the Plaintiff in foreclosing its first mortgage specifically reserved its rights under said Second Mortgage, and the Note secured thereby, to apply pursuant to Rule 71 (c) SCRPC to the Court for any surplus funds resulting from the foreclosure sale conducted in connection with the foreclosure of the First Mortgage and to bring suit to collect all amounts due under said Second Mortgage Note if not paid in full from said surplus funds.

#### CONCLUSIONS 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.

IT IS ORDERED, ADJUDGED AND DECREED:

1. That there is due to the plaintiff on the obligation and mortgage set forth in the complaint the sum of \$87,507.16 representing the "Total Debt" due Plaintiff as set out in paragraph fourteen supra, together with interest at the rate provided in said obligation on the balance of principal from the aforesaid date to the date hereof.

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2. The amount due in the preceding paragraph (the "Total Debt" as set forth in paragraph fourteen 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 5.875% per annum.

3. That the defendant(s) liable for the aforesaid mortgage debt do, 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.

4. 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 Courthouse, in the City of Spartanburg, County and State aforesaid, on some convenient sales hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event, the salesday shall be on Tuesday next succeeding such holiday), on the following terms, that is to say:

a. FOR CASH: the undersigned Master in Equity will require a deposit of 5% on 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 thirty (30) 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 5.875%.

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

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

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5. If plaintiff is the successful bidder at said sale, for a sum not exceeding the amount of costs, expenses and the 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.

6. Personal or deficiency judgment being demanded, the bidding will remain open for thirty (30) after the date of sale, but Plaintiff has reserved the right to waive its demand for a personal or deficiency judgment and if waived, the bidding will not remain open after the date of sale and compliance with the bid may be made immediately.

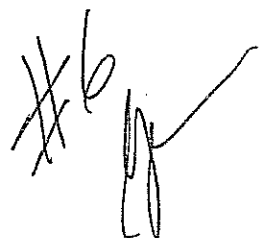
7. That the undersigned Master in Equity will, by advertisement according to law, give notice of the time and place of such sale, and the terms thereof; and will execute to the purchaser, or purchasers, a deed to the premises sold. The plaintiff, or any other party to this action, may become a purchaser at such sale, and that if, upon such sale being made, the purchaser or purchasers, should fail to comply with the terms thereof within thirty (30) days after date of sale, then the undersigned Master in Equity may advertise the said premises for sale on the next, or some other subsequent salesday, at the risk of the former highest bidder, and so from time to time thereafter until a full compliance shall be secured.

8. That the undersigned Master in Equity do 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 to be held pending further order of this Court.

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9. It is further ORDERED, ADJUDGED AND DECREED 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 from the premises the occupant of the property sold, together with all personal property located thereon, put the successful bidder or his assigns in full, quiet and peaceable possession of said premises.

10. And it is further ORDERED, ADJUDGED AND DECREED that each defendant named herein, Joseph F. Colbert and Tracie L. Colbert and all persons whosoever claiming under 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.

11. IT IS FURTHER ORDERED that, pursuant to S. C. CODE Ann. Section 30-9-31 (Supp. 1987), that the deed of conveyance made pursuant to said sale shall be indexed in the grantor index by the Register of Mesne Conveyance 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.

12. 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 funds pursuant to Rule 71(c), South Carolina Rules of Civil Procedure.

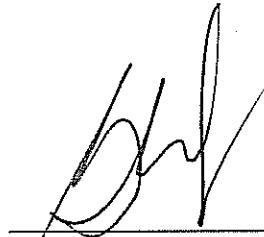
13. The following is a description of the premises herein ordered to be sold:

ALL those certain lots or parcels of land in Spartanburg County, South Carolina, about a mile Northwest of the Town of Inman just off the Old Howard Gap Road, shown as Lot Nos. 3 and 4 on a Plat of Lakeview Heights, made for W. O. Johnson by W. N. Willis, Engineers, September 20, 1955 and recorded in Plat Book 33, pages 170 and 171, RMC Office for Spartanburg County, South Carolina.

ALSO, ALL that certain lot or parcel of land in Spartanburg County, South Carolina about a mile Northwest of the Town of Inman just off the Old Howard Gap Road, adjoining Lot Nos. 4, 3 and 6 on a Plat of Lakeview Heights, made for W. O. Johnson by W. N. Willis, Engineers, September 20, 1955 and recorded in Plat Book 33, pages 170 and 171, RMC Office for Spartanburg County, South Carolina, forming an unnumbered lot 85 feet on Golightly Street with a rear width of 85 feet and having side lines on the northeast of 132 feet and on the southwest of 126 feet and being more particularly described as follows: BEGINNING at an iron pin 173 feet from the Old Howard Gap Road at a point on the northern side of Golightly Street and running thence N 58-00 W 126 feet along the back of Lot No. 3 and a portion of Lot No. 4 to an iron pin at the back of Lot No. 6, running thence N 28-30 E along the back line of Lot No. 6 85 feet to an iron pin; thence S 58-00 E 130 feet to a point on Golightly Street; thence S 33-00 W 85 feet along Golightly Street to the beginning corner.

This being the same property conveyed to Joseph F. Colbert and Tracie L. Colbert deed of Leroy Melton, Jr., Stanley J. Melton and Susan Melton Lavender dated February 28, 2007 and recorded March 6, 2007 in Book 87-Z at Page 286.

TMS No.: 39-10-043.00



Gordon G. Cooper, Master in Equity  
for Spartanburg County

Spartanburg, South Carolina

February 4, 2010  
wch:09-8265

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RECORDED  
SPARTANBURG COUNTY  
SOUTH CAROLINA

