

STATE OF SOUTH CAROLINA )  
 ) IN THE COURT OF COMMON PLEAS  
 COUNTY OF SPARTANBURG ) (Non-Jury)

Bank of Travelers Rest, )  
 ) C.A. NO: 2009-CP-42-4553  
 Plaintiff, )  
 ) DECREE OF FORECLOSURE  
 vs. )  
 ) (Deficiency Requested as to  
 Elizabeth J. Ninde, ) Elizabeth J. Ninde)  
 )  
 Defendant. )  
 \_\_\_\_\_ )

FILED  
 CLERK OF COURT  
 SPARTANBURG COUNTY  
 2009 NOV - 3 PM 12:12  
 MARC KITCHENS

NON-ELIGIBLE UNDER THE HOME AFFORDABLE MODIFICATION PROGRAM

Pursuant to Rule 53 of the *South Carolina Rules of Civil Procedure*, and upon the stipulation and agreement of all parties hereto not in default, the above-entitled foreclosure action was referred to me for the purpose of conducting a hearing on the same, taking testimony, determining all issues of fact and law, and entering a final judgment thereon.

A hearing was conducted before me in the above-captioned case and the testimony taken on November 3, 2009. Plaintiff was represented by the law firm of Love, Thornton, Arnold & Thomason, P. A., John L. B. Kehl appearing. No appearances were entered for the Defendant. From the records and from the testimony and evidence introduced, I make the following findings of fact and conclusions of law:

(1) I find that the Lis Pendens was filed on August 14, 2009, and that the original Summons and Complaint were filed on August 20, 2009 in the Office of the Spartanburg County Clerk of Court.

(2) I find from the various Affidavits of Service and/or Acceptances of Service on file that all Defendants have been properly served with, or accepted service of, the Lis Pendens, Summons and Complaint. I further find from Affidavits of Default by Plaintiff's attorney that the Defendant Elizabeth J. Ninde is in default and that no Notice of Appearance, Answer or Demurrer has been served by the Defendant upon the attorneys for Plaintiff and that the time for so answering or appearing has expired.

(3) I find that this action was brought for the foreclosure of a real estate mortgage, that the property secured by the mortgage is in Spartanburg County and that this Court has jurisdiction of all parties and of the subject property.

(4) I find that all Defendant debtors and property owners in default, all attorneys of record, and any Defendants who may have answered pro se were notified of the time, date and place of the hearing in this matter and were provided with a copy of the Order of Reference.

(5) I find that Elizabeth J. Ninde executed and delivered the subject note on February 7, 2007, in favor of Bank of Travelers Rest, and that Elizabeth J. Ninde concurrently executed a mortgage to secure same. I further find that the amount of said note and mortgage was One Hundred Three Thousand Five Hundred and no/100ths (\$103,500.00) Dollars, with repayment terms as specified therein.

(6) I find that said mortgage encumbered and conveyed to Bank of Travelers Rest the property described below and that said mortgage was recorded on February 23, 2007 in Mortgage Book 3839 at page 577 in the Register of Deeds Office for Spartanburg County:

ALL that certain piece, parcel or lot of land located in the County of Spartanburg, State of South Carolina, being shown as Lot 12 on a plat of

Palmetto Estates, recorded in the RMC Office for Spartanburg County in Plat Book 57 at page 518, reference to said plat is hereby made for a more complete and accurate description thereof.

(7) I find that Defendant Elizabeth J. Ninde was the record owner of the subject real property as of the date the Lis Pendens was filed and that Plaintiff is the lawful owner and holder of the note and mortgage being foreclosed. I further find that said mortgage constitutes a first mortgage lien upon the subject property.

(8) I find that said note and mortgage provided that, upon the failure by the debtor to pay the debt as specified in the note, the holder thereof might, at its option, declare the entire outstanding indebtedness immediately due and payable and further provided for the recovery of such sums advanced as may be necessary to protect the priority of its mortgage and the property secured thereby and further provided for attorney's fees and costs to be added to the outstanding indebtedness should the note and mortgage be placed in the hands of an attorney for collection.

(9) I find that Defendant Elizabeth J. Ninde has defaulted in payments and that Plaintiff has exercised its option to declare the entire outstanding indebtedness immediately due and payable. I further find that Plaintiff is entitled to foreclose its mortgage.

(10) I find that the balance due and owing Plaintiff by the Defendant debtor as of the date of hearing was One Hundred Fourteen Thousand Seven Hundred Ninety-six and 84/100ths (\$114,796.84) Dollars, including costs to date and attorney's fees, but excluding advertising, recording fees and any future court costs, with a daily accrual rate of \$22.49, figured at the interest rate set forth in the subject note. I further find that the aforementioned balance was calculated as follows:

|   |               |
|---|---------------|
| Principal Balance:                      | \$104,450.14  |
| Interest Due:                           | 5,561.54      |
| Late Charges:                           | 245.25        |
| Attorney Fee                            | 4,000.00      |
| Filing Fee                              | 160.00        |
| Service costs                           | 75.00         |
| Motion Fee                              | 25.00         |
| Reference fee                           | 100.00        |
| Court Reporter                          | 35.00         |
| Deed fee                                | 25.00         |
| Recording deed & release                | 17.00         |
| Postage, copies, courier, mileage, etc. | <u>102.91</u> |

BALANCE DUE \$114,796.84

I further find that the post-judgment interest rate shall be the contract rate as specified in the loan documents, through the date of compliance and, in the event of a deficiency, at the legal rate thereafter.

(11) I find that the balance anticipated to be due and owing by the Defendant debtors as of Sales Day, December 7, 2009 shall be Four Thousand and no/100ths (\$4,000.00) Dollars, exclusive of costs and attorney's fees, with a daily accrual rate of \$22.49.

(12) I find that Plaintiff has placed the subject note and mortgage in the hands of Love, Thornton, Arnold & Thomason, P.A. for foreclosure and that Four Thousand and no/100ths (\$4,000.00) Dollars is a reasonable attorney's fee for their services performed and anticipated to be performed until final adjudication of the within foreclosure action. Anticipated services to be performed do not include exceptional circumstances delaying conclusion beyond the normal time.

(13) I find that Plaintiff specifically seeks a personal or deficiency judgment against Defendant Elizabeth J. Ninde, in the event the proceeds of sale or value of the property acquired by Plaintiff at sale is insufficient to satisfy the indebtedness due

Plaintiff under the terms of the subject note and mortgage and that Plaintiff is entitled to have any equity of redemption barred and to have the property sold at public auction on Sales Day December 7, 2009, with the proceeds to be applied toward costs and expenses, attorney's fees and the mortgage indebtedness. However, Plaintiff reserves the right to waive deficiency until the date and time of sale.

(14) I find that the Defendant Elizabeth J. Ninde is not actively in the Armed Forces of the United States and is, therefore, not entitled to the benefits of the Servicemembers Civil Relief Act (108 P.L. 189; 117 Stat. 2835; 2003 Enacted H. R. 100).

(15) I find, (a) that Plaintiff has complied with the requirements of the Ex Parte Temporary Restraining Order of the Supreme Court of South Carolina dated May 4, 2009 in the matter of Federal National Mortgage Association ("Fannie Mae") Loans Subject to Foreclosure Sale and the related Administrative Order of the Supreme Court of South Carolina dated May 22, 2009; (b) that the mortgage loan which is the subject of this foreclosure proceeding is not owned or guaranteed by the Federal National Mortgage Association ("Fannie Mae") or the Federal Home Loan Mortgage Corporation ("Freddie Mac") or held by a servicer which has signed an agreement to participate in the Home Affordable Modification Program ("HMP") and that Plaintiff has signed no agreement to participate in the HMP; and, (c) that all notices have been given as required by the aforementioned Orders and there has been no timely filing of any counter affidavits.

(16) IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

That, as of the date of hearing, there is due to the Plaintiff, under the terms of the subject note and mortgage, the sum of One Hundred Fourteen Thousand Seven

Hundred Ninety-six and 84/100ths (\$114,796.84) Dollars, including attorney's fees of Four Thousand and no/100ths (\$4,000.00) Dollars, costs to date, and for all future costs and expenses of this action, with interest on said debt from the date of hearing through the date of compliance at the contract rate and thereafter, in the event of a deficiency judgment, at the legal judgment rate; that the Plaintiff's mortgage be foreclosed and any equity of redemption of the named Defendants and all persons whomsoever claiming under him, her, them, or it, be forever barred; that the mortgaged premises, as described in the Complaint and previously in this Decree, be sold at public auction on Legal Sales Day, December 7, 2009, or on some subsequent date designated by the Court; that I, as Master in Equity for Spartanburg County, South Carolina, after having duly advertised for the sale of the mortgaged premises according to the law and custom of this Court, sell to the highest bidder the mortgaged premises described in the Complaint and previously in this Decree, at public auction at the Spartanburg County Courthouse on Legal Sales Day, December 7, 2009, during the usual hours of public sale.

(17) IT IS FURTHER ORDERED, ADJUDGED AND DECREED:

That the terms of this sale shall be cash, with the purchaser to pay for paper and stamps; that each successful bidder, other than the Plaintiff shall be required to deposit with me at the time the bid is accepted, cash or certified check in the sum of five percent (5%) of the bid as evidence of good faith; that interest shall accrue on the bid at the rate set forth in the note through the date of compliance; that the bidding shall not be closed upon the date of sale, but shall remain open for thirty (30) days in compliance with the *Code of Laws of South Carolina*, 1976, as amended, §15-39-720; that, in the event the purchaser fails or refuses to comply with the terms of the sale within twenty (20) days of

the close of bidding, the deposit shall be forfeited and applied first to the costs, then to Plaintiff's debt, and that the Master shall forthwith advertise and resell said property upon the same terms on some subsequent date, as designated by the Court, at the risk of the former purchaser, until obtaining a full compliance with the terms of the sale; that upon the purchaser's compliance with the terms of the sale, the Master shall execute a good and sufficient deed of conveyance to the premises, and the purchaser shall thereby be entitled to possession of the premises; that upon production of the Master's deed, the purchaser shall be entitled to be let into possession of the premises by the Sheriff of Spartanburg County, South Carolina, pursuant to further hearings if necessary.

(18) IT IS FURTHER ORDERED, ADJUDGED AND DECREED:

That the property shall be withdrawn from sale in the event Plaintiff or an agent of Plaintiff does not appear at the sale.

(19) IT IS FURTHER ORDERED, ADJUDGED AND DECREED:

That the proceeds derived from such sale should be applied as follows:

First, to the payment of all costs and expenses of this action, including a fee for the Plaintiff's attorneys as heretofore provided and any Guardian ad Litem fees or fees for attorneys appointed by the Court; next to the payment of the amount due upon the note and mortgage owned by the Plaintiff; and finally, after disbursing the proceeds of the sale as aforesaid, that any balance thereafter remaining be held by me subject to the further Order of this Court.

(20) IT IS FURTHER ORDERED, ADJUDGED AND DECREED:

That the afore-described property should be sold subject to any property taxes that are due, past due or accruing as of the date of sale and/or compliance and that the

sale should not be final at the close of bidding, but that the bidding shall remain open for thirty (30) days, in compliance with the *Code of Laws of South Carolina*, 1976, as amended, §15-39-720.

(21) IT IS FURTHER ORDERED, ADJUDGED AND DECREED:

That, in compliance with §30-9-31 of the *Code of Laws of South Carolina*, 1976, as amended, any deed of conveyance made pursuant to this sale shall be indexed in the grantor index by the Register of Deeds for Spartanburg County in the name of the owner of record of the subject property immediately prior to the execution of the Master's Deed, as well as in the name of the undersigned Master in Equity who executes such deed as grantor.

(22) IT IS FURTHER ORDERED, ADJUDGED AND DECREED:

That in the event there be any deficiency remaining on the indebtedness due Plaintiff after the proceeds of sale are applied to the indebtedness due as outlined above, said deficiency shall be assessed against Defendant Elizabeth J. Ninde and Plaintiff shall have personal judgment against said Defendant for the amount of said deficiency.

(23) IT IS FURTHER ORDERED, ADJUDGED AND DECREED:

That Plaintiff has reserved the right to waive deficiency until the date and time of sale. In the event Plaintiff waives its right to a deficiency at sale, the sale shall become final at the close of bidding on Legal Sales Day, December 7, 2009.


(24) IT IS FURTHER ORDERED, ADJUDGED AND DECREED:

(a) That Plaintiff has complied with the requirements of the Ex Parte Temporary Restraining Order of the Supreme Court of South Carolina dated May 4, 2009 in the matter of Federal National Mortgage Association ("Fannie Mae") Loans Subject to

Foreclosure Sale and the related Administrative Order of the Supreme Court of South Carolina dated May 22, 2009; (b) that the mortgage loan which is the subject of this foreclosure proceeding is not owned or guaranteed by the Federal National Mortgage Association ("Fannie Mae") or the Federal Home Loan Mortgage Corporation ("Freddie Mac") or held by a servicer which has signed an agreement to participate in the Home Affordable Modification Program ("HMP") and that Plaintiff has signed no agreement to participate in the HMP; and, (c) that all notices have been given as required by the aforementioned Orders and there has been no timely filing of any counter affidavits.

(25) IT IS FURTHER ORDERED, ADJUDGED AND DECREED:

That this action shall remain open for any other proper purpose.

  
GORDON G. COOPER  
Master in Equity for Spartanburg County

Spartanburg, South Carolina

November 3, 2009

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
2009 NOV - 3 PM 12:12  
MARC KITCHENS