

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Vanderbilt Mortgage and Finance, Inc.

Plaintiff,

-vs-

Linzy A. Peeler, Tracie R. Peeler,
Carolina Plastic Surgery, Department of
Treasury - Internal Revenue Service,
State of South Carolina Department of
Revenue, and UNIFUND CCR
PARTNERS, a General Partnership,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CASE NO. 11-CP-42-4043

MASTER IN EQUITY'S ORDER
AND
JUDGMENT OF FORECLOSURE
AND SALE
(Deficiency Judgment Waived)

TO:

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B. Lindsay Crawford, Esquire
Sara Hutchins, Esquire
Adam Schanz, Esquire
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Linzy A. Peeler
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Cowpens, SC 29330

Tracie R. Peeler
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Cowpens, SC 29330

Carolina Plastic Surgery
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Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure (hereinafter "SCRCP"), the above-entitled matter was referred by Order of Reference 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 decision of the Master in Equity shall be directly to the South Carolina Court of Appeals.

Pursuant to the said reference, a hearing was held, attended by the attorney(s) of record, and from the evidence presented, I find and conclude as follows:

FINDINGS OF FACT:

1. The Lis Pendens was filed on September 21, 2011.
2. The Summons and Complaint were filed on September 21, 2011.
3. Service was made upon the Defendant(s) named in this Report as is shown by the proof of service filed herein.
4. The Defendant(s) is/are in default as shown by Affidavit filed herein.
5. According to an Affidavit filed herein, no Defendant in default is in the military service of the United States of America, as contemplated under the Service Members Civil Relief Act.

6. The Defendant(s) was/were notified of the time, date and place of hearing in this matter.

7. For value received, Linzy A. Peeler and Tracie R. Peeler made, executed and delivered a note, dated January 25, 2001, promising thereby to pay to the order of Vanderbilt Mortgage and Finance, Inc. the sum of \$61,871.00, with interest at the (initial) rate of 9.99% 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 Linzy Peeler and Tracie Peeler made, executed and delivered to CMH Homes, Inc. d/b/a Luv Homes a mortgage, in writing, dated January 25, 2001, covering real property in Spartanburg County, which is the same as that described in the Complaint. The mortgage was recorded on January 30, 2001, and is of record in the Office of the Register of Deeds for Spartanburg County in REM 2429 at Page 906.

9. This mortgage constitutes a first lien on the subject property and is a purchase money mortgage.

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

11. By assignment recorded in the Office of the Register of Deeds for Spartanburg County in REM 4500 at Page 854, CMH Homes, Inc. d/b/a Luv Homes assigned the subject note and mortgage to Vanderbilt Mortgage and Finance, Inc. No Defendant raised any issues related to Plaintiff's standing to prosecute this action. By virtue of said assignment, the Plaintiff in this action is the owner and holder of the note and mortgage.

12. The titleholder of record of the subject property as of the filing of the Lis Pendens in this action was/were Linzy Peeler and Tracie Peeler, who was/were the original mortgagor.

13. That in order to better secure the payment of said note and debt, a lien was placed upon the mobile home owned by the Defendant(s) Linzy A. Peeler and Tracie R. Peeler, to wit: 2001 Clayton VIN#: CAP009856TNAB.

14. Payment due on the note 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 its attorney of record herein for collection.

15. Having specifically considered each of the following: the nature, extent and difficulty of the services rendered (the field of mortgage foreclosures being a specialized area of practice); the time and labor devoted to the case, including reviewing the various loan documents, performing the title search, preparing, filing and serving the pleadings, preparing for the hearing, including preparing the judgment and other documents requested by the Court, attending the hearing, preparing for and attending the sale, and preparing any post-sale documents requested by the Court; the professional standing of the Plaintiff's attorney; the fee customarily charged in this jurisdiction for similar services; and the beneficial results obtained for the Plaintiff, I find that the sum of \$900.00 is a reasonable attorney's fee for the Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of the within action, under the terms of the 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, unanticipated circumstances delaying conclusion beyond the normal time.

16. The amount due and owing on the note and mortgage, with interest at the rate provided in the note, and other costs and expenses of collection, including attorney's fees, secured by the note and mortgage, is as follows:

a.	Principal Balance due as of March 1, 2011	\$45,604.32
b.	Interest from January 30, 2011, to January 3, 2012, at 9.99% per annum	\$4,213.66
c.	Advancements to Escrow for insurance/taxes	\$623.43
d.	LESS:	\$0.00
e.	Late Charges	\$300.00
f.	Costs of collection prior to hearing	\$1,141.09
g.	Attorney's Fee (paragraph 14, supra)	\$900.00

Total Debt secured by note and mortgage, including interest to date: \$52,782.50

Interest for the period from the date shown in b. above through the date of this judgment, at 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 9.99% 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 the Plaintiff's debt secured by the mortgage through the date to which such interest is computed.

17. The Plaintiff is seeking foreclosure of its mortgage and has, in the Complaint or subsequently thereto in writing, expressly waived the right to a personal or deficiency judgment pursuant to Rule 71(b), SCRCP.

18. The following Defendant(s), claim or may claim lien/liens upon or interest in the subject property; and in the event there is a surplus from the sale of the subject property, the validity, priority and amount of any such junior lien claim will be determined at a hearing subsequent to the sale. in accordance with Rule 71(c), SCRCP. The said Defendant(s) and such claim(s) or lien(s) is/are as follows:

- a) Carolina Plastic Surgery, judgment against Trace Peeler dba , in the amount of \$986.88, filed in the Office of the Clerk of Court for Spartanburg County on October 18, 2004, in Judgment Roll No. 278464
- b) Department of Treasury - Internal Revenue of Service , Federal Tax Lien, filed on October 14, 2008 in Book 11 at Page 666 Serial # 479031808.
- c) South Carolina Department of Revenue, State Tax Lien, Tax Lien Numbers: 3-61038646-0 and 3-51080394-1.
- d) UNIFUND CCR PARTNERS, a General Partnership, pending litigation against Linzy Peeler, filed in the Office of the Clerk of Court for Spartanburg County on April 10, 2006, in Case No. 06-CP-42-1201.

19. Pursuant to Section 2410(c), Title 28, United States Code, the Defendant, United States of America, has a right of redemption on proper application to redeem the within property for 120 days from the date of sale of the subject property.

20. That the subject Mortgage is not subject to the Supreme Court of South Carolina *Administrative Order Re: Mortgage Foreclosures and the Home Affordable Modification Program ("HMP")*, 2009-05-22-01, filed May 22, 2009.

21. The attorney for the Plaintiff, in compliance with The Supreme Court of South Carolina *Administrative Order Re: Mortgage Foreclosures Actions*, 2011-05-02-01, has certified that pursuant to Supreme Court Administrative Order 2011-05-02-01 the Mortgagor(s) have been served with the required notice of rights, and more than 30 days have elapsed since service upon the Mortgagor(s), and the Mortgagor(s) have failed, refused, or voluntarily elected not to participate in any foreclosure intervention process.

CONCLUSIONS OF LAW:

I, therefore, conclude as follows:

1. The Plaintiff should have (judgment on its note, which shall be entered immediately, and it should have) judgment of foreclosure of its mortgage; and the mortgaged property should be ordered sold at public auction after due advertisement.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

2. That there is due to the Plaintiff on its note and mortgage the sum of \$52,782.50, representing the Total Debt due to the Plaintiff as set out in Paragraph 15, supra, together with interest thereon at the rate provided in the note to the date hereof.

3. That the amount due in the preceding paragraph (the "Total Debt" as set forth in Paragraph 15, supra, and later accrued interest and costs) shall constitute the total judgment debt due to the Plaintiff and shall bear interest hereafter at the rate of 9.99% per annum, pursuant to the terms of the note and mortgage.

4. The amount of the judgment shall be subject to increase to permit the Plaintiff to recover additional costs, commission and expenses, including but not limited to the deposit made in compliance with Section 14-11-310, Code of Laws of South Carolina, 1976. Such additional costs, commissions and expenses may be established by affidavit and shall be adjudicated by the Court without further hearing. The judgment may also be increased to include supplemental compensation for attorney's services not contemplated by the initial attorney's fee award. Jurisdiction over the attorney's fee award and total debt is reserved to the undersigned to facilitate the assessment and payment of any such costs and/or supplemental compensation.

5. That the Defendant(s) Linzy Peeler and Tracie Peeler is/are liable for the aforesaid mortgage debt shall, prior to the date and time of the sale of the subject property, hereinafter described, pay to the Plaintiff, or the Plaintiff's attorney, the amount of the Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

6. That on default of payment prior to the date and time of the sale, the mortgaged premises, hereinafter described, shall be sold by the undersigned Master In Equity at public auction, at the Spartanburg County Courthouse, in the County and State aforesaid, at 11:00 a.m. on the next convenient sales day hereafter (the first Monday in each month except when the first

Monday is a legal holiday in which case the sale day is on the Tuesday next succeeding the holiday), on the following terms, that is to say:

a. FOR CASH: The Master in Equity shall require a deposit at the conclusion of the bidding 5% of the amount of the bid, in cash or equivalent, as evidence of good faith, the same to be applied on the purchase price in case of compliance with the bid, but in case of non-compliance within Thirty (30) days, the same to be forfeited and applied to the costs and then to the Plaintiff's debt.

b. Interest on the balance of the bid shall be paid to the day of compliance at the rate of 9.99% per annum.

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

d. The sale shall also be subject to the Right of Redemption by the Defendant, United States of America, pursuant to Sec. 2410(c), Title 28, United States Code, for a period of 120 days from the date of sale of subject property.

e. Purchaser to pay for the deed and the cost of recording the deed.

7. That if the Plaintiff is 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, the Plaintiff may pay to the undersigned Master in Equity only the amount of the costs and expenses, crediting the balance of the bid on the Plaintiff's indebtedness.

8. That a personal or deficiency judgment being waived, the bidding will not remain open after the date of sale, but compliance with the bid may be made immediately.

9. That the Master in Equity, by advertisement according to law, give notice of the time and place of sale and the terms thereof; and that he will execute to the purchaser, or

purchasers, a deed to the premises sold. The Plaintiff, or any other party to this action, or any other person may become a purchaser at such sale. Upon such sale being made, should the successful bidder, or his assignee, fail to comply with the terms thereof within twenty (30) days after the date of sale, then the Master in Equity may re-advertise the premises for sale on the next, or some other subsequent, salesday, 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 shall apply the proceeds of the sale as follows:

FIRST: To the 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; and

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

NEXT: Any surplus will be held pending further Order of this Court pursuant to Rule 71(c), SCRCF.

11. The South Carolina Department of Motor Vehicles shall issue a Certificate of Title to the mobile /manufactured home to the successful purchaser of the subject property at the foreclosure sale herein or its successors or assigns.

12. That it is further ORDERED, ADJUDGED AND DECREED that, in the event the successful bidder is other than the Defendant(s) in possession herein, upon the presentation of a Writ of Assistance the Sheriff of Spartanburg County is hereby directed to eject and remove from the premises the occupant(s) of the property sold, together with any and all personal property located thereon, and to put the successful bidder, or his assigns, in full, quiet and peaceable

possession. All valid tenant rights pursuant to Protecting Tenants at Foreclosure Act of 2009 shall be protected

13. That it is further ORDERED, ADJUDGED AND DECREED that each Defendant(s) named herein, and all persons whomsoever claiming under him, them or it, 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.

14. That it is further ORDERED, ADJUDGED AND DECREED that the deed of conveyance made pursuant to this judgment and said sale shall contain the names of only the Plaintiff, the first-named Defendant(s) Linzy Peeler and Tracie Peeler, who was/were the titleholder of the mortgaged property at the time of the filing of the Lis Pendens, and the Grantee; and that the Register of Deeds is hereby authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

15. That the undersigned Master in Equity shall retain jurisdiction to do all necessary acts incident to this foreclosure, including, but not limited to, the issuance of a Writ of Assistance, disposing of any surplus funds pursuant to Rule 71(c), SCRCP, and hearing any issues involving appraisal proceedings under Sections 29-3-680, et seq., Code of Laws of South Carolina, 1976.

16. That it is further ORDERED, ADJUDGED AND DECREED that, if the Plaintiff or the Plaintiff's representative does not appear at the scheduled sale of the mortgaged property, hereinafter described, the undersigned (or the sale officer designated herein) shall pull the property from sale; and in the event that the sale is nevertheless conducted, then such sale will be null, void and of no force and effect. In such event, the sale will be rescheduled for the next or some subsequent sales day.

17. That after the Order Confirming Sale and Disbursements has been issued and filed, the undersigned Master In Equity shall direct the Register of Deeds to release of record the mortgage lien being foreclosed, which mortgage lien is/are described in the Findings of Fact hereinabove.

18. That the following is a description of the premises herein ordered to be sold:

All that certain piece, parcel or tract of land in Spartanburg County, State of South Carolina shown and designated as Tract D, containing 2.00 acres, on a plat prepared for Linzy and Tracie Peeler by John Robert Jennings, RLS, dated January 26, 2001 and recorded herewith in the Office of the Register of Deeds for Spartanburg County.

DERIVATION: This is a portion of the property conveyed to Linzy Peeler and Tracie Peeler by deed of Marie B. Duncan dated September 21, 2000 and recorded September 25, 2000 in Mortgage Book 72-S at Page 636, Office of the Register of Deeds for Spartanburg County.

TMS#: 3-14-00-149.03

Property Address: 1254 Bunche Lane, Cowpens, SC 29330

Mobile Home: 2001Clayton VIN#: CAP009856TNAB

AND IT IS SO ORDERED.

Gordon G. Cooper
Spartanburg County Master In Equity

Spartanburg, South Carolina
January 3, 2012