

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG  
CitiMortgage, Inc.,

Plaintiff(s)

vs.

David C. Montgomery and First Magnus  
Financial Corporation

Defendant(s).

IN THE COURT OF COMMON PLEAS

CASE NO.: 2009-CP-42-3714

ORDER AND JUDGMENT OF  
FORECLOSURE AND SALE

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
2009 NOV -4 PM 12:08  
MARC KITCHENS

Appearances: **Thomas Phillips**  
Plaintiff's Attorney

Pursuant to Rules 53 and 71 of the South Carolina Rules of Civil Procedure (hereinafter "SCRCP"), this matter was referred to me to make appropriate findings of fact and conclusions of law, with authority to enter a final judgment in the cause. Any appeal from this Report of Judgment of Foreclosure and Sale shall be directly to the South Carolina Court of Appeals.

Hearing was held, attended by attorneys of record and testimony was taken, which is reported herewith. From the testimony and evidence I conclude as follows:

**FINDINGS OF FACT**

1. The *Lis Pendens* was filed on July 6, 2009
2. The Summons and Complaint was filed on July 6, 2009
3. Service was made upon the Defendants named in this Report as shown by the Affidavits of Service filed herein.
4. The Defendants, David C Montgomery, are in default as shown by the 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 Servicemembers' Civil Relief Act.

6. All Defendants were notified of the time, date, and place of hearing in this matter, as evidenced by the Affidavits of Service filed herein.
7. For value received, David C Montgomery (hereinafter referred to as the "Mortgagor(s)") made, executed and delivered a Note, dated December 14, 2006, promising to pay to the order of First Magnus Financial Corporation the sum of \$108,750.00, with interest at the rate of 6.000% per annum.
7. To better secure repayment of the Note the Mortgagor(s) made, executed, and delivered to Mortgage Electronic Registration Systems, Inc., as nominee for First Magnus Financial Corporation a Mortgage dated December 14, 2006, covering real property which is located in Spartanburg County. The Mortgage was recorded on December 18, 2006 in the Office of the Register of Deeds/Clerk of Court for Spartanburg County in Book 3803 at Page 972
8. The recorded Mortgage constitutes, and is, a First lien on the subject property.
9. Mortgage Electronic Registration Systems, Inc., as nominee for First Magnus Financial Corporation then assigned the Note and Mortgage to the Plaintiff by Assignment of Mortgage dated May 27, 2009.
10. On July 9, 2009 the Assignment was recorded in the Office of the Register of Deeds/Clerk of Court for Spartanburg County in Book 4250 at Page 157.
11. By virtue of said assignment(s) the Plaintiff of this action is the owner and holder of the note and mortgage.
12. The title holders of record of the subject property as of the filing of the *Lis Pendens* in this action were David Montgomery, the original mortgagors.
13. The Note and Mortgage contain the following terms and conditions:
  - a. The Plaintiff shall be entitled to receive on the first day of each and every month installment payments which are amortized over the period of time which is set forth therein and in the event of a default in payment of any monthly installment the Plaintiff is entitled, after first

giving thirty (30) days prior notice, to accelerate the entire indebtedness and to demand payment thereof without further notice.

b. The Plaintiff shall be entitled to receive late charges for any monthly installment payment which is overdue.

c. The Mortgagor(s) shall be required to provide insurance to protect against loss to the property and certain minimal escrow funds shall be established and maintained with the Plaintiff for the purpose of paying for such insurance.

d. The Mortgagor(s) shall be required to pay for all costs of property taxes assessed by governmental authorities and certain minimal escrow funds shall be established and maintained with the Plaintiff for the purpose of paying such taxes.

e. The Mortgagor(s) shall, at the Plaintiff's option, be required to provide mortgage insurance to protect the Plaintiff's interest in securing repayment of the mortgage loan and certain minimal escrow funds shall be established and maintained with the Plaintiff for the purpose of paying for such insurance.

f. The Plaintiff is entitled to be reimbursed for all expenses which it shall incur in pursuing the remedies to which it is entitled in the event of a default by the Mortgagor(s), including reimbursement of its reasonable attorney's fees and costs of title evidence.

g. The Mortgage is owned, securitized or guaranteed by Fannie Mae, Freddie Mac or by a servicer participating in the HMP.

Although the Mortgage is owned, securitized or guaranteed by Fannie Mae, Freddie Mac or by a servicer participating in the HMP, the loan is not subject to modification under the HMP for the following reasons:

a. The owner-occupant borrower has failed to respond to Plaintiff's attempts to have the eligible borrower participate.

14. Payment due on the Mortgage Note has not been made, the Plaintiff's prospects for repayment have been significantly impaired and the Plaintiff 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 considered the nature, extent and difficulty of the services rendered (the field of mortgage foreclosures being a unique area of practice); the time involved in reviewing the various loan documents; performing the title search; preparing the pleadings; and preparing for, and attending, hearings; the professional standing of 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 \$1050.00 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. 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 a reasonable time. In such event the Plaintiff may apply to this Court for such additional expenses of collection and attorneys fees as may be reasonable under the circumstances.

16. The amount due and owing on the note and mortgage, with interest at a 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 Due:	\$ 105,464.58
b. Interest from 1/1/2009 to 11/4/06 @ 6.00% per annum	\$ 5,325.21
c. Escrow Advances	\$ (1,773.07)
d. Late Charges	\$ 423.80
e. Costs of Foreclosure prior to hearing	\$ 787.00
f. Attorney's Fee	\$ 1050.00

g. Unapplied Funds	\$	<u>(476.97)</u>
f. Property Inspection:	\$	<u>165.00</u>
<b>TOTAL INDEBTEDNESS</b>	\$	<u><b>110,965.55</b></u>

17. If the amount of interest which is set forth in paragraph 15 (b) above is not calculated through the date of this judgment, the Plaintiff is entitled to such additional interest as shall accrue on the principal indebtedness at the rate of 6.000% per annum from the date to which it is calculated in this judgment order up through the date of this judgment order and shall be added to the above stated "**Total Indebtedness**" to comprise the amount of judgment indebtedness determined and entered herein.

18. Interest after the date of Judgment shall accrue at the legal rate.

19. The Plaintiff seeks a personal or deficiency judgment . A personal or deficiency judgment having been demanded, the bidding will remain open for thirty days after the date of sale, with the sale to final upon that date.

20. The hereinafter named Defendant(s) may have some interest in or lien upon the premises covered by the Mortgage set herein, or some part thereof, but that such interests or liens are junior or subsequent to the lien of the Plaintiff's Mortgage, or do not attach to the property which is the subject of this action, or have been paid in full and not satisfied of record. Said liens or interests are of record in the Register of Deeds or Clerk of Court and are described as follows:

A. Defendant First Magnus Financial Corporation is made a party hereto because the Plaintiffs are informed and believe that said Defendant holds a mortgage lien against the subject real estate by virtue of a Deed of Trust in the sum of \$36,250.00 entered against the Mortgagor(s) the said Deed being filed December 18, 2006 and recorded in the Office of the Clerk of Court for Spartanburg County Book 3803 at Page 988.

## CONCLUSIONS OF LAW

Based upon the above Findings of Fact, I conclude the following:

1. The Plaintiff should have judgment of foreclosure of its mortgage; and the mortgaged property should be ordered sold at public auction after due advertisement.
2. There is due to the Plaintiff on its note and mortgage the sum of **\$110,965.55**, representing the Total Indebtedness which is due to the Plaintiff as set forth in paragraph 15 of the Findings of Fact, together with interest thereon at the rate provided in the Note to the date hereof as set forth in paragraph 16 of the Findings of Fact, which shall, and hereby does, constitute the total judgment debt due to the Plaintiff. Interest after the date of judgment shall accrue at the legal rate.
3. The Defendant(s) liable for the aforesaid mortgage debt shall, prior to the date and time of sale of the subject property, hereinafter described, pay to Plaintiff, or the Plaintiff's attorney, the amount of the Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.
4. On default of payment by the Defendant(s) liable for the Mortgage debt prior to the date and time of the sale, the mortgaged premises, hereinafter described, shall be sold by the undersigned at public auction, at the Spartanburg County Courthouse, in the City of Spartanburg, County and State aforesaid, on some convenient sales day hereafter, on the following terms:
  - A. **FOR CASH:** The undersigned shall require a deposit of 5% on the amount of the bid (in cash or equivalent) the same to be applied on the purchase price only upon compliance with the bid, but in the 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 date of compliance at the legal rate.

C. The sale shall be subject to taxes and assessments, existing easements and restrictions of record and the following senior encumbrances and liens:

D. The purchaser to pay for the deed and the cost of recording the deed.

5. 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 the undersigned only the amount of the costs and expenses, crediting the balance of the bid against the Plaintiff's indebtedness.

6. A personal or deficiency judgment having been demanded by the Plaintiff, the bidding will remain open after the date of sale for (30) thirty days.

7. The undersigned shall, by advertisement according to law, give notice of the time and place of sale and the terms thereof; and shall execute to the purchaser, or purchasers, a deed to the premises sold.

8. The Plaintiff, or any other party to this action, or any other person may become a purchaser at such sale.

9. Upon such sale being made, should the successful bidder, or his assignee, fail to comply with the terms thereof within thirty (30) days after the date of sale, then the undersigned may re-advertise the premises for sale on the next, or some subsequent, sales day, at the risk of the highest bidder, and so from time to time thereafter until full compliance shall be secured.

10. If the Plaintiff, or a representative of the Plaintiff, shall not be present at the sale, this Court shall postpone the sale to the next available sale date.

11. The undersigned 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* fees or fees of attorneys appointed under Order of Court; and

NEXT: To the payment of the Plaintiff, or the Plaintiff's attorney, of the amount of the Plaintiff's indebtedness or so much thereof as the purchase money will pay against the same;

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

12. Each Defendant named herein, and all persons whomsoever claiming under such Defendant(s), shall be, and are, 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. The deed of conveyance made pursuant to this judgment and said sale shall contain the names of only the Plaintiff, the Defendant(s) who was/were the title holder of the mortgaged property at the time of the filing of the *Lis Pendens*, and the Grantee and the Register of Deeds and/or the Clerk of Court is hereby authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.
14. If the subject property includes a mobile home, the Office of the South Carolina Department of Motor Vehicles shall issue title to the successful purchaser at foreclosure sale.
15. The undersigned hereby retains jurisdiction to do all necessary acts incident to this foreclosure action, including, but not limited to, the issuance of a Writ of Assistance and the disposition of any surplus funds pursuant to Rule 71(c), SCRCP.
16. The Plaintiff has demanded a deficiency judgment. If the proceeds of the sale, net of any commissions on the sale, shall be insufficient to pay the judgment amount herein awarded to the Plaintiff, the proceeds of the sale shall be credited against the judgment amount pursuant to S.C. Code §§ 29-3-650 and 660, and the Plaintiff shall continue to have judgment against the David Montgomery for the unpaid amount remaining. Such judgment, after crediting the proceeds of sale, net of any commission on sale, shall be entered without further notice of hearing.

17. After the Order Confirming Sale and Disbursements has been issued and filed, the undersigned shall direct the Register of Deeds and/or the Clerk of Court to release of record the mortgage liens being foreclosed.

18. Pursuant to Rule 77 (d), SCRCP, the Clerk of Court shall serve a notice of entry of this judgment upon all parties who are not in default for failure to appear herein.

19. In the event the successful bidder is other than the Defendant(s) in possession herein, 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 without delay, and to keep the successful bidder or his assigns in such peaceable possession.

20. In the event the successful bidder is other than the Defendant(s) herein and the occupants have voluntarily vacated the premises or have been ejected from the premises leaving furnishings, fixtures and items not subject to the Plaintiff's mortgage, the Plaintiff is authorized to remove therefrom all furnishings, fixtures and items not subject to the lien of the Plaintiff's mortgage, which personal property shall be deemed abandoned and shall be removed by the Plaintiff or its agents from the subject property by placing said personal property on the public street or highway or by any other means.

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

All that piece, parcel, or lot of land, situate, lying and being in Spartanburg County, State of South Carolina, being known and designated as Lot 44 of Crestview Hills, Being more fully described in Plat Book 66, Page 598-605 recorded in the RMC Office for Spartanburg County. Reference is hereby made to said plat for a more complete description of metes and bounds thereof.

This being the same property conveyed to mortgagors by deed of Karen E. Scott dated 12-14-06 to be recorded simultaneously herewith in the RMC Office for Spartanburg County TMS# 9-02-10-005.00

PROPERTY ADDRESS: 211 North Celestial Drive, Greer, SC 29651

TMS: 9-01-10-005.0

**AND IT IS SO ORDERED, ADJUDGED AND DECREED.**

Spartanburg, South Carolina

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Gordon G. Cooper  
Master In Equity for Spartanburg County

ATTORNEYS FOR THE PLAINTIFF:

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