

STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG

Citicorp Trust Bank, FSB,

vs.

Wendy S. Barton and Carolina First Bank,

Plaintiff,

Defendant(s).

(File No. 4008.33508)

Heath M. Stewart, III  
RILEY POPE & LANEY, LLC  
Attorneys for Plaintiff

IN THE COURT OF COMMON PLEAS

C/A NO.: 2008-CP-42-4879

**MASTER IN EQUITY'S REPORT AND  
ORDER OF JUDGMENT OF  
FORECLOSURE AND SALE DECREE**

(Non-Jury)

(Deficiency Waived)

Wendy S. Barton  
*Pro Se*

2008 NOV 20 PM 12:02  
MARC KITCHENS

FILED  
CLERK OF COURT

Pursuant to Rule 53 SCRPC, the above entitled matter was referred to the undersigned to make appropriate findings of fact and conclusions of law with authority to enter a final judgment in this cause without further order of court. Any appeal from this Order is to the Supreme Court.

Pursuant to said Order of Reference a hearing was held on November 20, 2008, attended by 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 OF FACT:

- 1) The Lis Pendens was filed on August 29, 2008. An Amended Lis Pendens was filed on September 17, 2008.
- 2) The Summons and Complaint were filed on September 17, 2008.
- 3) Service was made upon the Defendant(s) as shown by the proof of service filed herein.
- 4) The Defendant(s) Carolina First Bank is in default as shown by affidavit or order filed herein.
- 5) The Defendant(s) and all attorneys of record were notified of the time, date, and place of the hearing in this matter.
- 6) According to the affidavit filed herein, no individual Defendants in default are in the military service of the United States of America, as contemplated under the Servicemembers' Civil Relief Act (SCRA) of 2003, and any amendments thereto.
- 7) For value received, Tim Barton and Wendy S. Barton made, executed and delivered a note ("Note") dated September 4, 2001, promising thereby to pay to the order of Travelers Bank &

Trust, FSB the sum of Fifty One Thousand One Hundred Seventy Three and 63/100 (\$51,173.63) Dollars, with interest at the rate of 10.2792% per annum, with a current rate of 10.2792% 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, Tim Barton and Wendy S. Barton made, executed, and delivered to Travelers Bank & Trust, FSB a certain real estate mortgage ("Mortgage") in writing, dated September 4, 2001, covering real property in Spartanburg County, which is the same as that described in the Complaint. The Mortgage was filed in the Office of the Register of Mesne Conveyances/Register of Deeds for Spartanburg County on September 7, 2001, in Book 2552 at Page 887. Thereafter, on or about August 15, 2002, Travelers Bank & Trust, FSB changed its corporate title to Citicorp Trust Bank, FSB.

9) The Mortgage evidences and secures the repayment of money advanced by the mortgagee to, or on behalf of, the mortgagor(s) and constitutes a first mortgage lien on the mortgaged premises; however, it is not a purchase money mortgage.

10) A Notice to Cure pursuant to the Consumer Protection Code was sent to the Mortgagors.

11) The Plaintiff is entitled to reformation of the Deed and/or Mortgage to reflect that certain plat entitled, "Albert L. Ravan, Jr., Location: In Landrum, County: Spartanburg, State: SC" dated June 5, 1995, and prepared by James V. Gregory, PLS as being recorded in Plat Book 146 at Page 615 to the legal description contained in Plaintiff's mortgage.

12) The legal description should read as follows:

All that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Spartanburg, containing 2.45 acres, more or less, and being shown and delineated on that certain plat entitled, "Albert L. Ravan, Jr., Location: In Landrum, County: Spartanburg, State: SC" dated June 5, 1995, and prepared by James V. Gregory, PLS, recorded in Plat Book 146 at Page 615 and having the following metes and bounds: Beginning at an iron pin in the Northern margin of the 50 foot right of way for Forest Avenue, said iron pin being the terminus of the second call in the metes and bounds description of Parcel #3 of that certain deed from Josephine Caney to Duane W. King and Doris H. King, duly recorded on October 2, 1991 in Deed Book 58-D, Page 308, in the RMC Office for Spartanburg County, South Carolina; thence running from said beginning point and with the Northern margin of Forest Avenue, the following two (2) calls: North 64 degrees 33 minutes 42 seconds West 61.19 feet to an iron pin and North 76 degrees 03 minutes 44 second West 85.09 feet to an iron pin in the Eastern margin of the 50 foot right of way for Albert Street; thence with the Eastern margin of Albert Street, the following three (3) calls: North 31 degrees 09 minutes 53 seconds West 138.11 feet to an iron pin, North 32 degrees 08 minutes 44 seconds West 239.34 feet to an iron pin and North 21 degrees 18 minutes 28 seconds West 69.00 feet to an iron pin in the centerline of a creek; thence leaving said street and running with the centerline of said creek the following five (5) calls: South 76 degrees 59 minutes 00 seconds East 125.14 feet to an iron pin, South 60 degrees 15 minutes 50 seconds East 109.92 feet to an iron pin, South 86 degrees 10 minutes 00 seconds East 95.86 feet to an iron pin, South 45 degrees 49 minutes 00 seconds East 44.37 feet to an iron pin, and South 60 degrees 46 minutes 00 seconds East 117.50 feet to an iron pin in the property line of property now or formerly belonging to Theodore McDowell; thence with the McDowell's property line, South 30 degrees 20 minutes 00 seconds East 192.68 feet to an iron pin in a branch and the

property now or formerly belonging to Duane W. King and Doris H. King; thence with the centerline of said branch and the property line of King the following three (3) calls: North 62 degrees 25 minutes 00 seconds West 58.82 feet to an iron pin, South 53 degrees 34 minutes 00 seconds West 135.03 feet to an iron pin and South 29 degrees 58 minutes 00 seconds West 41.01 feet to the point of beginning, containing 2.45 acres, more or less, as shown and delineated on the plat hereinafter referred to, reference being made to said plat in aid of the description herein.

This being the same property conveyed to Wendy S. Barton by Robert David Babb and Brenda Babb by Deed dated March 17, 2000 and recorded March 20, 2000 in Book 71-R, Page 932, Spartanburg County, State of South Carolina.

13) The Plaintiff in this action is the owner and holder of the Note and Mortgage it is seeking to foreclose.

14) The titleholder of record of the subject property as of the filing of the Lis Pendens in this action is Wendy S. Barton, who is the original mortgagor.

15) Any notice required by the terms of the Mortgage or by state or federal statutes has been given to the applicable Defendant(s) prior to the commencement of this action.

16) Payment due on the Note has not been made as provided for therein, and the Plaintiff, as the holder thereof, has elected to require immediate payment of the entire amount due thereon and has placed the Note and Mortgage in the hands of its attorney for collection by foreclosure.

17) The sum of \$1,400.00 is a reasonable fee to allow as attorney's fees for Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of this action, under the terms of the Note and Mortgage. The inclusion of 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 the normal time.

18) The amount due and owing on the Note, with interest at the rate provided in the Note, and other costs and expenses of the within action, including an attorney's fee, secured by the Note and Mortgage, is as follows:

(a) Principal amount due as of November 20, 2008	\$30,030.08
(b) Interest from March 18, 2008 to November 20, 2008	\$1,888.52
(c) Advances	
Property Inspections, BPOs, Appraisals	\$203.00
(d) Late charges	\$1,122.53
(e) Costs of collection prior to hearing (service of process, filing fees, etc.)	\$1,105.00
(f) Attorneys Fee	\$1,400.00
<b>Total debt secured by Note and Mortgage, including interest to date shown</b>	<b>\$35,749.13</b>

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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 10.2792% 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 Plaintiff's debt secured by the Mortgage through the date to which such interest is computed.

19) The Plaintiff is seeking the usual foreclosure of the 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) SCRPC.

20) The following Defendant(s) claim(s) or may claim a lien upon or interest in the subject property or are otherwise involved in this matter. However, such liens or interests are subordinate to Plaintiff's lien; or do not attach to the property which is the subject of this action; or have been paid in full and were not satisfied of record. In the event there is a surplus from the sale of the subject property, the validity, priority and amount of such liens will be determined at a hearing subsequent to the sale, in accordance with Rule 71(c), SCRPC. The Clerk of Court/Register of Deeds is hereby ordered to release said liens in so much as it pertains to the property which is the subject of this action:

*a) Carolina First Bank by virtue of a mortgage given to MountainBank by Wendy S. Barton on March 17, 2000 in the original sum of \$35,000.00 and filed of record in the office of the ROD/RMC for Spartanburg County on March 20, 2000 in Mortgage Book 2320 at Page 110. The Clerk of Court/Register of Deeds is hereby ordered to release said liens in so much as it pertains to the property which is the subject of this action.*

#### CONCLUSIONS OF LAW

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

- 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.
- 2) The Defendants named herein, and all persons whosoever claiming under Defendants, are forever barred and foreclosed of all right, title, interest, equity of redemption or lien in the said mortgaged premises so sold, or any part thereof.
- 3) Pursuant to Rule 53, SCRPC, this Order shall constitute a final judgment.
- 4) The Plaintiff is granted reformation of the Deed and/or Mortgage to reflect that certain plat entitled, "Albert L. Ravan, Jr., Location: In Landrum, County: Spartanburg, State: SC" dated June 5, 1995, and prepared by James V. Gregory, PLS as being recorded in Plat Book 146 at Page 615 to the legal description contained in Plaintiff's mortgage.



5) The following defendants have no interest in the property which is the subject of this action and the Clerk of Court/Register of Deeds is hereby ordered to release said liens in so much as it pertains to the property which is the subject of this action:

*a) Carolina First Bank by virtue of a mortgage given to MountainBank by Wendy S. Barton on March 17, 2000 in the original sum of \$35,000.00 and filed of record in the office of the ROD/RMC for Spartanburg County on March 20, 2000 in Mortgage Book 2320 at Page 110. The Clerk of Court/Register of Deeds is hereby ordered to release said liens in so much as it pertains to the property which is the subject of this action.*

6) There is due to the Plaintiff on the Note and Mortgage set forth in the Complaint the sum of \$35,749.13, as set out in the Findings of Fact *supra*.

7) The amount due in the preceding paragraph (the "Total Debt" as set out in the Findings of Fact *supra*) shall accrue interest at the rate of 10.2792% per annum and together with such interest and other advances, to be proven by statement of account shall constitute the total amount of judgment in foreclosure.

8) The Defendants liable for the aforesaid judgment debt including interest at the rate of 10.2792% per annum shall 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.

9) On default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, as hereinafter set forth, shall be sold by the Master in Equity, at public auction, at the County Courthouse in Spartanburg, South Carolina, on some convenient sales day hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event, the sales day shall be on some other day appointed by the Court), on the following terms, that is to say:

10) For cash: The Master in Equity, will require, at the time of the bid, a deposit of 5% of the amount of the bid (in cash or equivalent) same to be applied to purchase price if compliance is made, but in the event of non-compliance, the deposit may be forfeited without further hearing and applied first to the costs of the action and then to plaintiff's debt. Should the successful bidder at the regularly conducted sale fail or refuse to make the required deposit at time of bid or comply with the other terms of the bid within twenty (20) days, then the property may be re-sold on the same terms and conditions on some subsequent Sales Day, but at the risk of the defaulting bidder(s).

11) Interest on the balance of the bid shall be paid through the day of compliance at the rate of 10.2792%.

12) Purchaser shall pay for any statutory commission on sale from the proceeds of sale, deed preparation, costs of recording the deed, and deed stamps.

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13) A personal or deficiency judgment having been waived, the bidding will not remain open after the date of sale and compliance with the bid may be made immediately.

14) The 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 if, upon such sale being made, the purchaser, or purchasers, should fail to comply with the terms thereof within twenty (20) days after the conclusion of the bidding, then the Master in Equity, may advertise the said premises 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.

15) In the event an agent of the Plaintiff does not appear at the time of sale, the within property shall be withdrawn from sale and sold at the next available sales day upon the terms and conditions as set forth in this Judgment of Foreclosure and Sale or such terms as may be set forth in a supplemental order.

16) If Plaintiff is the successful bidder at the sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of Plaintiff in full, Plaintiff may pay to the Master in Equity, only the amount of the costs and expenses crediting the balance of the bid on Plaintiff's indebtedness.

17) The Master in Equity will 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;

NEXT: To the payment to the Plaintiff or Plaintiff's attorney of the amount of Plaintiff's debt and interest (including attorney fees) or so much thereof as the purchase money will pay on the same;

NEXT: Any surplus should be held pending further Order of this court.

18) In the event the successful bidder is other than the Defendant(s) in possession herein, and upon full compliance, the Sheriff of Spartanburg County is ordered and directed to eject and remove from the premises the occupant(s) of the property sold, together with all personal property located thereon, and put the successful bidder or his assigns in full, quiet, and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.

19) In accordance with S.C. Code Ann. §30-9-31, the deed of conveyance made pursuant to said sale shall be indexed by the R.M. C. 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 Master in Equity, who executes such deed as grantor.

20) The undersigned will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance.

A handwritten signature in black ink, appearing to be the initials 'HJP' followed by a stylized flourish.

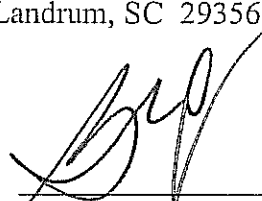
21) The following is a description of the premises herein ordered to be sold:

All that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Spartanburg, containing 2.45 acres, more or less, and being shown and delineated on that certain plat entitled, "Albert L. Ravan, Jr., Location: In Landrum, County: Spartanburg, State: SC" dated June 5, 1995, and prepared by James V. Gregory, PLS, recorded in Plat Book 146 at Page 615 and having the following metes and bounds: Beginning at an iron pin in the Northern margin of the 50 foot right of way for Forest Avenue, said iron pin being the terminus of the second call in the metes and bounds description of Parcel #3 of that certain deed from Josephine Caney to Duane W. King and Doris H. King, duly recorded on October 2, 1991 in Deed Book 58-D, Page 308, in the RMC Office for Spartanburg County, South Carolina; thence running from said beginning point and with the Northern margin of Forest Avenue, the following two (2) calls: North 64 degrees 33 minutes 42 seconds West 61.19 feet to an iron pin and North 76 degrees 03 minutes 44 second West 85.09 feet to an iron pin in the Eastern margin of the 50 foot right of way for Albert Street; thence with the Eastern margin of Albert Street, the following three (3) calls: North 31 degrees 09 minutes 53 seconds West 138.11 feet to an iron pin, North 32 degrees 08 minutes 44 seconds West 239.34 feet to an iron pin and North 21 degrees 18 minutes 28 seconds West 69.00 feet to an iron pin in the centerline of a creek; thence leaving said street and running with the centerline of said creek the following five (5) calls: South 76 degrees 59 minutes 00 seconds East 125.14 feet to an iron pin, South 60 degrees 15 minutes 50 seconds East 109.92 feet to an iron pin, South 86 degrees 10 minutes 00 seconds East 95.86 feet to an iron pin, South 45 degrees 49 minutes 00 seconds East 44.37 feet to an iron pin, and South 60 degrees 46 minutes 00 seconds East 117.50 feet to an iron pin in the property line of property now or formerly belonging to Theodore McDowell; thence with the McDowell's property line, South 30 degrees 20 minutes 00 seconds East 192.68 feet to an iron pin in a branch and the property now or formerly belonging to Duane W. King and Doris H. King; thence with the centerline of said branch and the property line of King the following three (3) calls: North 62 degrees 25 minutes 00 seconds West 58.82 feet to an iron pin, South 53 degrees 34 minutes 00 seconds West 135.03 feet to an iron pin and South 29 degrees 58 minutes 00 seconds West 41.01 feet to the point of beginning, containing 2.45 acres, more or less, as shown and delineated on the plat hereinafter referred to, reference being made to said plat in aid of the description herein.

This being the same property conveyed to Wendy S. Barton by Robert David Babb and Brenda Babb by Deed dated March 17, 2000 and recorded March 20, 2000 in Book 71-R, Page 932, Spartanburg County, State of South Carolina.

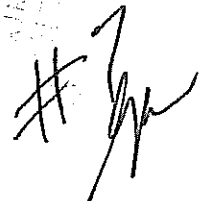
TMS No. 1-07-08-039.06

Property Address: 104 Albert Street, Landrum, SC 29356



Honorable Gordon G. Cooper  
Master in Equity, Spartanburg County

FILED  
2008 NOV 20 PM 12:02  
MARC KITCHENS  
CLERK OF COURT  
SPARTANBURG COUNTY



November 20, 2008  
Spartanburg, South Carolina