

COPY

IN THE COURT OF COMMON PLEAS  
CASE NO.: 2009-CP-42-04864

STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG

BankUnited, FSB,

Plaintiff,

v.

John Miramontes and Josefa Miramontes,

Defendant(s)

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

**DEFICIENCY DEMANDED AS TO  
DEFENDANT(S) JOHN MIRAMONTES  
AND JOSEFA MIRAMONTES**

Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure (hereinafter "SCRCP"), the above-entitled matter was referred 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 Supreme Court.

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

**FINDINGS OF FACT:**

1. The Lis Pendens was filed on September 2, 2009.
2. The Summons and Complaint were filed on September 2, 2009.
3. Service was made upon the Defendants named in this Report as is shown by the proofs of service filed herein.
4. The Defendant(s) 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 Servicemembers' Civil Relief Act fka Soldiers' and Sailors' Civil Relief Act of 1940, and any amendments thereto.
6. All Defendants were notified of the time, date and place of hearing in this matter.

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7. For value received, John Miramontes and Josefa Miramontes made, executed and delivered a note, dated June 12, 2006, promising thereby to pay to the order of BankUnited, FSB the sum of \$94,200.00 with interest at a variable rate of interest 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 John Miramontes and Josefa Miramontes made, executed and delivered a mortgage to BankUnited, FSB, in writing, dated June 12, 2006, covering real property in Spartanburg County, which is the same as that described in the Complaint. The mortgage was recorded on July 12, 2006, and is of record in the Spartanburg County Registry in Book 3701 at page 412.

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

10. As required by an Administrative Order issued by the South Carolina Supreme Court dated May 22, 2009, the Plaintiff states that this loan is owned or guaranteed by Fannie Mae, or it is owned or guaranteed by FHLMC, or the Plaintiff has signed an agreement to participate in the Home Affordable Modification Program ("HMP"); however, this loan is not eligible for modification under the HMP because the subject property is not the primary residence of the homeowner as it is a second home, as evidenced by the Second Home Rider to the Mortgage.

11. The titleholders of record of the subject property as of the filing of the Lis Pendens in this action were John Miramontes and Josefa Miramontes.

12. 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.

13. Having considered the nature, extent and difficulty of the services rendered (the field of mortgage foreclosures being a specialized 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 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 \$1,200.00 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.

14. 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:

Principal due as of today's date:	11/12/09		\$ 94,200.00
Accrued interest from:	03/02/09	to: 11/12/09	\$ 4,922.92
Accruing at:	7.5% per annum		
Advancements to Escrow			\$ 5,746.71
Corporate Advances			\$ 60.00
Late charges:			\$ 29.44
NSF:			\$ 25.00
Costs of collection prior to hearing:			\$ 630.00
Attorney's fees:			\$ 1,200.00

Total Debt secured by note and mortgage, including interest to date is \$106,814.07. 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 7.5% 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.

15. The Plaintiff is seeking foreclosure of its mortgage and has, in the Complaint or subsequently thereto in writing, expressly Demanded the right to a personal or deficiency Judgment pursuant to Rule 71(b), SCRPC.

CONCLUSIONS OF LAW: I, therefore, conclude as follows:

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. That there is due to the Plaintiff on its note and mortgage the sum of \$106,814.07, representing the Total Debt due to the Plaintiff as outlined above, 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") 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 7.5% per annum.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. That the Defendants 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.
2. 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 City of Spartanburg, County and State aforesaid, on some convenient sales day hereafter, on the following terms, that is to say:
  - A. FOR CASH: The undersigned Master In Equity 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 case of non-compliance within thirty (30) days the same to be forfeited and applied to the costs and then to the Plaintiffs debt.

B. Interest on the balance of the bid shall be paid to the day of compliance at the rate of 7.5% per annum.

C. The sale shall be subject to taxes and assessments, existing easements and restrictions of record, and any other senior encumbrances.

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

3. 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 Plaintiffs indebtedness.

4. That a personal or deficiency Judgment being Demanded, the bidding will remain open for thirty (30) days after the date of sale (pursuant to S.C. Code Ann. § 15-39-760(1976) but compliance with the bid may be made immediately.

5. That the undersigned Master In Equity will, 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 thirty (30) after the date of sale, then the undersigned Master In Equity may re-advertise the 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.

6. 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 date upon the terms and conditions as set forth in the Judgment of Foreclosure and Sale or such terms as may be set forth in a supplemental order.

7. That the undersigned 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 Plaintiffs Attorney, of the amount of the Plaintiff's debt and interest (including attorney fees) 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), SCRPC.

8. That it is further ORDERED, ADJUDGED AND DECREED that each Defendant 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.

9. 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, who was the title holder of the mortgaged property at the time of the filing of the Lis Pendens, and the Grantee; and that the Spartanburg County 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.

10. It is further ORDERED, ADJUDGED AND DECREED that in the event the successful bidder to whom the deed of conveyance has been issued subsequent to the sale is other than the Defendants in possession herein, the Sheriff of Spartanburg County may be ordered and directed to eject and remove from the premises the occupants of the property sold, together with all personal property located thereon, and put the successful bidder to whom the deed of conveyance has been issued 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.

11. That it is further ORDERED ADJUDGED AND DECREED 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 lien(s) being foreclosed, which lien(s) are described in the Findings of Fact herein above.

12. That it is further ORDERED ADJUDGED AND DECREED that 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 BEING SHOWN AND DESIGNATED AS LOT 215 OF DUNCAN STATION PHASE IV SHEET ONE OF TWO AS SHOWN ON PLAT THEREOF RECORDED IN PLAT BOOK 157 AT PAGE 449 AND HAVING, ACCORDING TO SAID PLAT, SUCH METES AND BOUNDS AS SHOWN THEREON.**


**THIS BEING A PORTION OF THE PROPERTY CONVEYED TO THE GRANTOR HEREIN BY DEED OF LENNAR CAROLINAS, LLC DATED OCTOBER 11, 2005 AND RECORDED OCTOBER 27, 2005 IN DEED BOOK 84-F AT PAGE 910.**

**THIS IS THE IDENTICAL PROPERTY CONVEYED TO THE MORTGAGOR HEREIN BY DEED OF TOWER HOMES, INC. WHICH DEED IS DATED AND RECORDED HERewith. (SEE DEED BOOK 86E, PAGE 733)**

CURRENT ADDRESS OF PROPERTY: 566 Duncan Station Drive, Duncan, SC 29334

TMS: 5-19-00-436.00

AND IT IS SO ORDERED.

  
The Honorable Gordon G. Cooper  
Master In Equity for Spartanburg County

Date: 11/12/09

Spartanburg, South Carolina

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