

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

C/A #: 2009-CP-42-03664

BRANCH BANKING AND TRUST)
COMPANY SUCCESSOR BY MERGER TO)
BRANCH BANKING AND TRUST)
COMPANY OF SOUTH CAROLINA,)

Plaintiff,)

vs.)

GILDA DUNAWAY a/k/a GILDA L.)
DUNAWAY and MORTGAGE)
ELECTRONIC REGISTRATION)
SYSTEMS, INC., AS NOMINEE FOR)
MOUNTAINBANK,)

Defendants.)

**MASTER'S ORDER
AND
JUDGMENT OF FORECLOSURE
AND SALE**

(Deficiency Judgment Demanded against Gilda
Dunaway a/k/a Gilda L. Dunaway)

**(Non-eligible under the Home Affordable
Modification Program)**

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2009 OCT 22 AM 11:04
MARC KITTING

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 the cause. Any appeal from this Order is to the Supreme Court.

Pursuant to the said Order of 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 July 1, 2009 in the Office of the Clerk of Court for Spartanburg County.
2. The Summons and Complaint were filed on July 1, 2009.
3. Service was made upon the Defendants named in this Report as is shown by the Affidavits of Service filed herein.

4. The Defendants are in default as shown by the Affidavit filed herein.

5. According to the 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, 50 U.S.C. app. §501, et seq., and any amendments thereto.

6. All Defendants in default and all attorneys of record and Defendants pro se were notified of the time, date, and place of hearing in this matter.

7. For value received, the Defendant Gilda Dunaway a/k/a Gilda L. Dunaway (the "Defendant Dunaway") made, executed, and delivered a Note dated March 8, 2004, promising thereby to pay to the order of Plaintiff the sum of Twelve Thousand Four Hundred and 00/100 (\$12,400.00) Dollars, with interest at the initial rate of 5.50% 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 Defendant Dunaway made, executed, and delivered to Plaintiff a Mortgage in writing, dated March 8, 2004, covering real property in Spartanburg County, which is the same as that described in the Complaint. The Mortgage was duly recorded upon the records of the Register of Deeds for Spartanburg County, South Carolina in Book 3186 at Page 414.

9. This Mortgage constitutes a second mortgage lien covering the property therein described.

10. A Notice of Right to Cure pursuant to the South Carolina Consumer Protection Code was sent to the Defendant Dunaway.

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

12. The titleholder of record in and to the subject real property as of the filing of the Lis Pendens in this action is the Defendant Dunaway who is the original Mortgagor.

13. 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 the attorney herein for collection.

14. The sum of One Thousand Five Hundred and 00/100 (\$1,500.00) Dollars is a reasonable fee to allow as attorney fees for 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 circumstances delaying conclusion beyond the normal time.

15. The amount due and owing on the Note, with interest at the rate provided on the Note, and other costs and expenses of collection, including an attorney's fee, secured by the Note and Mortgage, is as follows:

a.	Principal due as of October 22, 2009	\$11,773.53
b.	Interest due from August 12, 2008 to October 22, 2009 at 4.75% per annum.	852.71
c.	Late charges before being sent to attorney for collection	61.81
d.	Appraisal/BPO Fees	125.00
e.	Costs of collection prior to hearing (service, filing, etc.)	681.90
f.	Attorney's fee	<u>1,500.00</u>
	TOTAL DEBT SECURED BY NOTE AND MORTGAGE	\$14,994.95

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 4.75% 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.

16. The Plaintiff is seeking foreclosure of the Mortgage and has in the Complaint demanded the right to deficiency judgment against the Defendant Dunaway pursuant to S.C. Code Ann. Section 29-3-660 (1976).

17. The Defendant Mortgage Electronic Registration Systems, Inc., s Nominee for Mountainbank has or may claim an interest in this property by virtue of a certain mortgage given by Gilda L. Dunaway, dated April 2, 2003 and recorded on April 10, 2003 in Book 2928 at Page 223 in the office of the Register of Deeds for Spartanburg County, South Carolina. The interest of said Defendant is superior to the lien of the Plaintiff, and the sale will be subject to the superior lien of said Defendant.

CONCLUSIONS OF LAW

I, therefore, conclude as follows:

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 loan(s) subject to foreclosure in this action are non-eligible under the Home Affordable Modification Program.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. There is due to the Plaintiff on the obligation and Mortgage set forth in the Complaint the sum of Fourteen Thousand Nine Hundred Ninety-Four and 95/100 (\$14,994.95) Dollars, representing the Total Debt due Plaintiff as set out above, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date of this Order.

2. The amount due in the preceding paragraph (the "Total Debt" as set forth above, and later accrued interest on the principal) shall constitute the total judgment debt due the Plaintiff and shall bear interest hereafter at the rate of 4.75% per annum for the Mortgage.

3. That the Defendant Dunaway liable for the aforesaid Mortgage debt 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.

4. That on default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, as hereinafter set forth, be sold by the undersigned Master-in-Equity at public auction at the Spartanburg County Courthouse, in the City of 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 Tuesday next succeeding such holiday), on the following terms, that is to say:

(a) FOR CASH: The undersigned Master-in-Equity will require a deposit of five (5%) percent on the amount of the bid (in cash or equivalent) same to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance within thirty (30) days same to be forfeited and applied to the costs and Plaintiff's debt.

(b) Interest on the bid shall be paid to the day of compliance at the rate of 4.75% for the Mortgage.

(c) The sale shall be subject to taxes and assessments, existing easements and restrictions and easements and restrictions of record, the superior lien of Defendant Mortgage Electronic Registration Systems, Inc., as Nominee for Mountain bank and any other senior encumbrances.

(d) Purchaser to pay for cost of recording the deed.

(e) If the Plaintiff's representative is not in attendance at the scheduled time of the sale, the sale shall be canceled and sold on some subsequent sales day after due advertisement.

5. If Plaintiff is the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses, and the indebtedness of Plaintiff in full, Plaintiff may pay to the undersigned Master-in-Equity only the amount of the costs and expenses, crediting the balance of the bid on Plaintiff's indebtedness. No deposit shall be due if Plaintiff is the successful bidder.

6. Personal or deficiency judgment having been demanded against the Defendant Dunaway the sale will remain open for thirty (30) days pursuant to S.C. Code Ann. Section 15-39-720 (1976).

7. 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 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 that if, upon such sale being made, the Purchaser, or Purchasers, should fail to comply with the terms thereof within thirty (30) days after date of sale, the deposit shall be forfeited and the undersigned 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. At the hearing on this matter, the undersigned directed that the property be advertised for sale. In the event an advertisement is

published prior to the entry of this written Order, such advertisement is hereby ratified and approved nunc pro tunc as if same were published after the entry of this Order.

8. That the undersigned 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 or so much thereof as the purchase money will pay on the same.

NEXT: Any surplus will be held pending further Order of this Court.

9. It is further ORDERED, ADJUDGED AND DECREED that in the event the successful bidder is other than the Defendant Dunaway in possession herein, 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 such peaceable possession.

10. And it is further ORDERED, ADJUDGED AND DECREED that each Defendant named herein holding a lien or interest junior or subordinate to the lien of the Plaintiff and all persons whosoever 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.

11. IT IS FURTHER ORDERED that, pursuant to S.C. Code Ann. Section 30-9-31 (Supp. 1987), the deed of conveyance made pursuant to this sale shall be indexed in the grantor

index by the Register of Deeds 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 undersigned Master-in-Equity who executes such deed as grantor.

12. The undersigned Master-in-Equity will retain jurisdiction to do all the necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance and disposing of any surplus funds pursuant to Rule 71(c), SCRCF.

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

All that certain piece, parcel or lot of land with all improvements thereon, or hereafter constructed thereon, situate, lying and being in the State of South Carolina, County of Spartanburg being shown and designated as Lot No. 4 on a plat made for Salo Investment Company, dated December 26, 1964, revised October 17, 1967, revised July 3, 1970, by Gooch and Taylor, Surveyors recorded in Plat Book 62, Pages 242-244, ROD Office for Spartanburg County, South Carolina.

This being the same property conveyed to Roger Henry Dunaway and Gilda L. Dunaway by deed of J. Bruce Foster and Marion R. Griffin, as Executors and Trustees under the Last Will and Testament of Cecil O. Smith, dated May 24, 1988 and recorded May 27, 1988 in the ROD Office for Spartanburg County, South Carolina in Deed Book 54G at Page 340. Subsequently, Roger Henry Dunaway conveyed his interest in the property to Gilda L. Dunaway by deed dated July 30, 1997 and recorded November 7, 2002 in Deed Book 76-U at Page 554, ROD Office for Spartanburg County, South Carolina.

TMS No.: 2 44-00 033.04

5/ Gordon G. Cooper
Gordon G. Cooper
Master-in-Equity for Spartanburg County

MARC KITCHENS

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2009 OCT 22 AM 11:04

Spartanburg, South Carolina

10/22, 2009