

F34516
STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

PNC Bank, National Association,

PLAINTIFF,

vs.

Garrett A. Smith,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS
C/A NO: 10-CP-42-3810

**ORDER AND JUDGMENT OF
FORECLOSURE AND SALE
(DEFICIENCY WAIVED)**

TO: Thomas A. Shook
Susan S. White
Joseph T. Merli
Andrew M. Wilson
Elizabeth S. Moore
FINKEL LAW FIRM LLC
Attorneys for the Plaintiff

Pursuant to Rule 53 SCRPC, the above-entitled matter was referred. Any appeal from any order or judgment issued by the master or special referee shall be to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

Pursuant to the said Order of Reference, a hearing was held and was attended by counsel. The testimony was taken, which is reported herewith. From the testimony and evidence, I find, conclude and order as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Based upon the Certification of Non Owner Occupancy, the property is not owner occupied and provisions of the Administrative Order issued by the Chief Justice of the Supreme Court of South Carolina on May 2, 2011, Order 2011-05-02-01, do not apply to the within foreclosure action.

2. The Lis Pendens was filed on July 22, 2010.

3. The Summons and Complaint were filed on July 22, 2010.

4. Service was made upon the Defendant(s) named in this Report as is shown by the proof(s) of service filed herein.

5. The Defendant Garrett A. Smith a/ka/Garrett Smith is in default as shown by Affidavit(s) on file herein.

6. All of the defendants herein and/or all attorneys of record were notified of the time, date and place of the hearing in this matter.

7. According to the Affidavit filed herein, the Defendant Garrett A. Smith is not in the Military Service of the United States of America, as contemplated under the Servicemembers Civil Relief Act (2003), and any amendments thereto.

8. For value received, Garrett A. Smith made, executed and delivered a Note dated July 16, 2007, promising thereby to pay to the order of National City Mortgage a division of National City Bank, the sum of \$74,411.00, with interest at the rate of 6.75% per annum. Other terms and conditions are stated in the Note, which is of record herein.

9. To better secure the payment of the Note described above, the said Garrett A. Smith made, executed and delivered to National City Mortgage a division of National City Bank, a Mortgage in writing, dated July 16, 2007, covering real property in Spartanburg County, which is the same as that described in the Complaint. The Mortgage was filed on August 2, 2007, and is of record in the Office of the Register of Deeds for Spartanburg County in Book 3941 at Page 475.

10. This Mortgage constitutes a first mortgage lien on the subject property and is a Purchase Money Mortgage.

11. Effective November 7, 2009, National City Mortgage Co. a division of National City Bank merged into and with PNC Mortgage, a division of PNC Bank NA., thereby making it the plaintiff herein.

12. Pursuant to the Administrative Order of the Chief Justice, 2009-05-22-01, the loan that is subject of this action is held by a participant in the Home Affordable Modification Program (HMP). However the loan is not subject to modification because the property is not owner occupied.

13. The titleholder of record in and to the subject property as of the filing of the Lis Pendens in this action is Garrett A. Smith.

14. Payment due on the Note has not been made as provided for therein, and 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 an attorney for collection.

15. Counsel for Plaintiff filed an affidavit as to attorney's fees and costs in this case, which was not contested, and, therefore, I find as fact herein. Having considered the nature, extent and difficulty of the services rendered, the time involved in reviewing the various documents, performing the title search, preparing the pleadings, attending hearings and argument, the professional standing of counsel, the fee customarily charged for similar services, and the beneficial results obtained for Plaintiff. I find that the sum of \$930.00 is a reasonable fee to allow under the terms of the Note and Mortgage as attorney's fees for Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of the action.

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

Principal due as of December 1, 2009	\$ 72,548.55
Interest from November 1, 2009 through December 14, 2011 at 6.75%	10,379.15
Escrow adjustments (debits and credits)	2,787.69
Pro Rata	86.73
NSF Fees	20.00
Total Fees	10.00
Other Fees	245.00
Corporate Advance	1,711.00
Late charges	144.72
Attorney Fees	930.00
TOTAL DEBT secured by Note and Mortgage, including interest to date shown	\$88,862.84

Interest for the period from December 14, 2011 as shown above at the stated rate of 6.75% shall be added to the Principal Balance shown above through the date this Judgment is filed. After the date of judgment, interest at the rate of 6.75% on the total judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the Mortgage.

17. Plaintiff does not demand a deficiency judgment in the event the sale of the real estate herein does not yield a sum sufficient to satisfy all indebtedness due unto Plaintiff, including costs and Attorney's fees.

IT IS THEREFORE ORDERED:

1. There is due to Plaintiff on the obligation and Mortgage set forth in the Complaint the sum of \$88,862.84, representing the "Total Debt" due Plaintiff as set forth in the Findings of Fact, *supra*, together with interest at the rate provided therein from the date aforesaid to the date hereof.

2. The amount due in the preceding paragraph (the "Total Debt" as set forth in the Findings of Fact, *supra*, and later accrued interest) shall constitute the total judgment debt due the Plaintiff and shall bear interest hereafter at the rate of 6.75%.

3. The Defendant(s) liable for the aforesaid Mortgage debt shall, on or before the date of sale of the property hereinafter described, pay to Plaintiff, or Plaintiff's attorney, the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action. If such debt is paid in full, then the foreclosure sale shall be cancelled.

4. 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, or his agent

under the direction of the Master in Equity, at public auction, at the Spartanburg County Courthouse, 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 Master in Equity will require a deposit of 5% 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 20 days, the deposit may be forfeited without further hearing and applied to the costs and Plaintiff's debt.
- B. Interest on the balance of the bid shall be paid to the day of compliance at the rate of 6.75%.
- C. The sale shall be subject to taxes and assessments, existing easements and easements and restrictions of record.
- D. This Mortgage constitutes a first priority lien on the subject property and is a Purchase Money Mortgage.
- E. Purchaser to pay for deed preparation and costs of recording the Deed, and transfer taxes.

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

6. The Master in Equity will, by advertisement according to law, give notice of the time, date, place of sale, and the terms thereof, which Notice of Sale is incorporated herein by reference; and will execute to the Purchaser, or Purchasers, a deed to the premises sold. 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 20 days after date of sale, 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.

7. Should Plaintiff, Plaintiff's attorney, or Plaintiff's agent fail to appear on the day of sale, the property shall not be sold, and in that event any such sale shall be null and void and of no force and effect. The property shall be re-advertised and sold at some convenient sales day thereafter when Plaintiff, Plaintiff's attorney, or Plaintiff's agent is present.

8. That the Master in Equity will apply the proceeds of the sale as follows:

FIRST: To 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 of Plaintiff, or Plaintiff's attorney, of the amount of Plaintiff's debt and interest, so much thereof as the purchase money will pay on the same.

NEXT: Any surplus funds will be held pending further order of the Court.

9. **IT IS FURTHER ORDERED** that, in the event the successful bidder is other than the Defendant(s) in possession herein and the occupant(s) have voluntarily vacated the premises or have been ejected from the premises leaving furnishings, fixtures and items not subject to Plaintiff's Mortgage in said premises, upon full compliance with the bid, Purchaser is authorized to remove therefrom all furnishings, fixtures and items not subject to the lien of Plaintiff's mortgage, which personal property, being deemed abandoned, shall be removed by Purchaser or its agents from the subject property by placing said personal property on the public street or highway or by any other means.

10. **IT IS FURTHER ORDERED** that, in addition to all parties deemed by law to have received constructive notice of the action herein, the Defendant(s) named herein and all persons whomsoever claiming under said defendant(s), 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 the Deed of conveyances made pursuant to said sale shall contain the names of only the first named Plaintiff and the first named Defendant and the Defendant(s) who was/were the titleholder(s) of the mortgaged property at the time of filing of the notice of pendency of the within action, and the name of the grantee, and the Register of Deeds is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said Deed.

12. **IT IS FURTHER ORDERED** that the Master in Equity will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, issuing a Writ of Assistance and hearing any issues involving appraisal proceedings under Section 29-3-680 *et seq.*, South Carolina Code of Laws (1976), as amended.

13. Plaintiff does not warrant its title search to purchasers at foreclosure sale or other third parties, who should have their own title search performed on the subject property.

14. The Master in Equity shall direct the Register of Deeds to release of record the Mortgage lien being foreclosed, all subordinate liens and all prior liens ordered satisfied herein, after the Order Confirming Sale and Disbursements has been executed and filed. Plaintiff's Mortgage lien is described as follows:

That certain Mortgage given by Garrett A. Smith to National City Mortgage a division of National City Bank dated July 16, 2007 and recorded in the Office of the Register of Deeds for Spartanburg County on August 2, 2007 in Book 3941 at Page 475.

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

All that lot or parcel of land in Spartanburg County, SC, being shown and designated as Lot 28 on plat of Brookside Village III, Phase I, by Neil R. Phillips, RLS. dated March 7, 1977 and recorded in the ROD Office for Spartanburg County, SC in Plat Book 79, Page 304.

TMS Number: 5 21-15 103.00

PROPERTY ADDRESS: 20 Brooktown Ct, Wellford, SC

This being the same property conveyed to Garrett A. Smith by deed of Jeannette Dean Killin f/k/a Jennette M. Dean, dated July 16, 2007 and recorded in the Office of the Register of Deeds for Spartanburg County on August 2, 2007 in Deed Book 89-F at Page 112.

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Gordon G. Cooper
Master in Equity for Spartanburg County

Spartanburg, South Carolina

_____, 2011