

F35967
STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

PNC Bank, National Association,

PLAINTIFF,

vs.

Samantha Jackson; Walter Jackson; MTC
Federal Credit Union; Gwendolyn Hollis;
and Chase Home Finance, LLC f/k/a Chase
Manhattan Mortgage Corporation,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS
C/A NO: 11-CP-42-0070

**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 January 7, 2011, and an Amended Lis Pendens was filed on February 8, 2011.

3. The Summons and Complaint were filed on January 7, 2011 and Amended Summons and Complaint were filed on February 8, 2011.

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(s) Samantha Jackson, Walter Jackson, MTC Federal Credit Union, Gwendolyn Hollis and Chase Home Financial, LLC f/k/a Chase Manhattan Mortgage Corporation are 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(s) Samantha Jackson, Walter Jackson and Gwendolyn Hollis are not in the Military Service of the United States of America, as contemplated under the Servicemembers Civil Relief Act (2003), and any amendments thereto.

FOR A FIRST CAUSE OF ACTION

(Reformation of Deeds and Mortgage)

8. By corrective deed recorded in Book 77-L at Page 136 on March 4, 2003, Seppala Homes, Inc., conveyed Lot 89 ("Lot 89") of Pleasant Green, to Gwendolyn Hollis.

9. By deed recorded November 17, 2003 in book 79C at page 168, Layton T. Atkins and Betsy W. Atkins conveyed a Portion of Lot 90 ("Lot 90"), Pleasant Green, to Gwendolyn Hollis in order to adjust the southern boundary between lots 89 and 90 as shown on the plat recorded November 17, 2003 in Book 155 at Page 131.

10. By Master in Equity's Deed recorded March 3, 2004, in Book 79-V at Page 251 and corrective Master's deed recorded on March 15, 2005, in Book 82-N at Page 817, Lot 89 was transferred to Chase Manhattan Mortgage Corporation as the result of a mortgage foreclosure action.

11. By deed recorded March 15, 2005, in Book 82-N at Page 820, Chase Home Finance, LLC f/k/a Chase Manhattan Mortgage Corporation conveyed Lot 89 to Samantha Robinson.

12. By deed dated May 10, 2007 recorded June 7, 2007, in Book 88-T at Page 569, Samantha Robinson conveyed Lot 89 to Samantha Jackson f/k/a Samantha Robinson and Walter Jackson, the sole title holders of record and the mortgagors herein.

13. For value received, Samantha Jackson and Walter Jackson made, executed and delivered a Note dated May 10, 2007, promising thereby to pay to the order of National City Mortgage a division of National City Bank, the sum of \$87,210.00, with interest at the rate of 6.37% per annum. Other terms and conditions are stated in the Note, which is of record herein.

14. To better secure the payment of the Note described above, the said Samantha Jackson and Walter Jackson made, executed and delivered to National City Mortgage a division of National City Bank, a Mortgage in writing, dated May 10, 2007, covering real property in Spartanburg County, which is the same as that described in the Complaint. The Mortgage was filed on June 7, 2007, and is of record in the Office of the Register of Deeds for Spartanburg County in Book 3905 at Page 809.

15. This Mortgage constitutes a first mortgage lien on the subject property.

16. Based upon the public records of Spartanburg County, and only due to inadvertence and mutual mistake the property descriptions contained in the deeds recorded on recorded March 15, 2005, in Book 82-N at Page 817, recorded on March 15, 2005, in Book 82-N at Page 820, recorded on June 7, 2007, in Book 88-T at Page 569 and the plaintiff's mortgage recorded on June 7, 2007 in Book 3905 at Page 809, did not include the portion of Lot 90 conveyed to Gwendolyn Hollis by deed recorded November 17, 2003 in book 79C at page 168.

17. It was the intent all parties to convey to the defendants Samantha Jackson a/k/a Samantha Robinson and Walter Jackson the portion of Lot 90 as shown on the deed recorded in Book 79C at Page 168.

18. It was the intent of defendants Samantha Jackson a/k/a Samantha Robinson and Walter Jackson to deliver the subject mortgage to encumber all of Lot 89 as described in said mortgage, and further to encumber that portion of Lot 90 as described in the deed recorded in Book 79C at Page 168.

19. Plaintiff is entitled to reformation of the legal descriptions in the deeds recorded March 15, 2005, in Book 82-N at Page 817; recorded on March 15, 2005, in Book 82-N at Page 820; recorded on June 7, 2007, in Book 88-T at Page 569; and the plaintiff's mortgage recorded on June 7, 2007 in Book 3905 at Page 809, to include the portion of Lot 90 described above to comport with the intentions of the parties and the public records of Greenville County.

FOR A SECOND CAUSE OF ACTION

(Foreclosure of Mortgage)

20. On November 7, 2009, National City Mortgage a division of National City Bank was acquired by PNC Bank, National Association, the present lienholder and the plaintiff herein.

21. 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 under the HMP because it is insured by HUD.

22. The titleholder(s) of record in and to the subject property as of the filing of the Lis Pendens in this action are Samantha Jackson and Walter Jackson.

23. 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.

24. 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 \$1,180.00 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.

25. 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 September 1, 2010	\$ 83,729.58
Interest from August 1, 2010 through December 14, 2011 at 6.375%	7,299.00
Escrow adjustments (debits and credits)	1,292.12
Total Fees	10.00
Other Fees	89.00
Corporate Advance	1,190.00
Late charges	270.10
Costs of collection prior to hearing	920.00
Attorney Fees (awarded but unpaid)	1,180.00
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TOTAL DEBT secured by Note and Mortgage, including interest to date shown	\$95,979.80

Interest for the period from December 14, 2011 as shown above at the stated rate of 6.375% 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 6.375% on the total judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the Mortgage.

26. 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.

27. MTC Federal Credit Union, claim(s), or may claim a lien upon or interest in the subject property by virtue of a judgment against Walter Jackson, filed June 5, 2002, Judgment Roll No. 260556, in the amount of \$2,060.83.

The above mortgage no longer constitutes a lien against the subject property.

IT IS THEREFORE ORDERED:

1. There is due to Plaintiff on the obligation and Mortgage set forth in the Complaint the sum of \$95,979.80, 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 6.375%.

3. The legal descriptions in the deeds recorded March 15, 2005, in Book 82-N at Page 817; recorded on March 15, 2005, in Book 82-N at Page 820; recorded on June 7, 2007, in Book 88-T at Page 569; and the plaintiff's mortgage recorded on June 7, 2007 in Book 3905 at Page 809, are hereby reformed to include the portion of Lot 90, to comport with the intentions of the parties and the public records of Greenville County.

4. Based on the allegations in the Complaint, the default of the defendant MTC Federal Credit Union, and the evidence presented, I hereby order the judgment against Walter Jackson, filed June 5, 2002, Judgment Roll No. 260556, in the amount of \$2,060.83, no longer constitutes a lien against the subject property.

5. 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.

6. 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 6.375%.
- 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.
- E. Purchaser to pay for deed preparation and costs of recording the Deed, and transfer taxes.

7. 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.

8. 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.

9. 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.

10. 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.

11. **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.

12. **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.

13. **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.

14. **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.

15. 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.

16. 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 Samantha Jackson and Walter Jackson to National City Mortgage a division of National City Bank dated May 10, 2007 and recorded in the Office of the Register of Deeds for Spartanburg County on June 7, 2007 in Book 3905 at Page 809.

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

All that certain parcel of land situated in the County of Spartanburg and State of South Carolina, being known and designated as Lot 89, Pleasant Green, as shown on plat thereof recorded in Plat Book 151, Page 100, and having according to said plat, metes and bounds as shown thereon; and all that certain parcel of land situated in the County of Spartanburg and State of South Carolina, being known and designated as Part of Lot 90, Pleasant Green, as shown on plat prepared by PLS, Inc., dated 5-1-03 for Seppala Homes recorded in Plat Book 155 at Page 131 on November 17, 2003, and having according to said plat, metes and bounds as shown thereon.

TMS Number: 6-02-00-251.00

PROPERTY ADDRESS: 584 Pleasant Green Dr, Inman, SC

This being the same property conveyed to Samantha Jackson by deed of Chase Home Finance, LLC f/ka/a Chase Manhattan Mortgage Corporation, dated February 24, 2005 and recorded in the Office of the Register of Deeds for Spartanburg County on March 15, 2005 in Deed Book 82-N at Page 820. Thereafter by deed dated May 10, 2007 and recorded June 7, 2007 in Book 88-T at Page 569 Samantha Jackson conveyed the property to Samantha Jackson and Walter Jackson.

Gordon G. Cooper
Master in Equity for Spartanburg County

Spartanburg, South Carolina

_____, 2011