

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

SunTrust Bank,

PLAINTIFF,

vs.

Deborah P. Smith, Michael W. Smith, Donna O.
Johnson, South Carolina Department of Probation,
Parole & Pardon Services and Nelson Gurley,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

MASTER'S ORDER AND
JUDGMENT OF FORECLOSURE AND
SALE

(NON-JURY MORTGAGE
FORECLOSURE)

C/A NO:2009-CP-42-43

DEFICIENCY REQUESTED

MARC FITCHENS

2009 NOV -3 PM 3:35

FILED
CLERK OF COURT
SPARTANBURG COUNTY

F29-04505

TO:

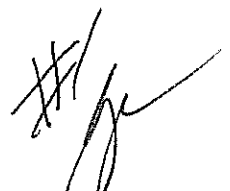
Korn Law Firm, P.A.
Attorney for Plaintiff

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.

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 conclude and order as follows:

FINDINGS OF FACT:

1. The Lis Pendens was filed on August 11, 2009.
2. The Summons and Complaint were filed on August 11, 2009.
3. Service was made upon the Defendant(s) named in this Report as is shown by the Proof(s) of Service filed herein.
4. That the Defendants Deborah P. Smith, Michael W. Smith, Donna O. Johnson, South Carolina Department of Probation, Parole & Pardon Services and Nelson Gurley are in default as shown by Affidavit on file herein.
5. The Defendants and/or 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 Defendant in default is in the Military Service of the United States of America, as contemplated under the Soldiers' and Sailors' Civil Relief Act of 1940, and any amendments thereto.



7. For value received, Michael Wayne Smith and Deborah Anne Smith made, executed and delivered a Note dated February 28, 2002, promising thereby to pay to the order of Central Carolina Bank the sum of Forty-Seven Thousand Two Hundred Seventy-Two And 34/100 Dollars (\$47,272.34), with interest at 7.950 percent 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 Michael Wayne Smith and Deborah Anne Smith made, executed and delivered to Central Carolina Bank a Mortgage in writing, dated February 28, 2002, covering real property in Spartanburg County, which is the same as that described in the Complaint. The mortgage was filed on March 13, 2002, and is of record in the Office of the Register of Deeds for Spartanburg County in Mortgage Book 2664 at page 375.

9. Thereafter by virtue of a corporate mergers, Central Carolina Bank merged with National Bank of Commerce; thereafter, National Bank of Commerce merged with SunTrust Bank making SunTrust Bank the present lien holder and Plaintiff herein

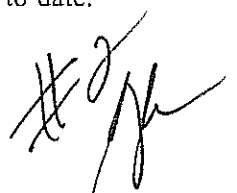
10. The above referenced instrument constitutes a first lien priority mortgage.

11. 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 the attorney herein for collection.

12. I find that since the inception of this action, plaintiff's attorney has assumed responsibility for the institution of this action and has searched and updated the title on the subject property from the date the current owner received the property or the date the mortgage was executed to the date of the filing of the Lis Pendens. He has been responsible for the preparation of the following pleadings:

1. Lis Pendens
2. Summons and Complaint
3. Affidavit of Default
4. Order of Reference
5. Notice of Hearing
6. Proposed Final Decree
7. Notice of Sale
8. Transcript of Testimony
9. Other documents as applicable pertaining to service and finalization of this action.

Additionally, he has arranged for service of process on the defendant(s), has scheduled and attended the hearing in this matter, has provided reinstatement figures to the primary defendant, if requested, and has had telephone conversations with the defendant(s), if requested. Future duties include forwarding copies of the Decree to the defendant(s), advising the defendant(s) of the date that the property will be sold, arranging and coordinating the amount to be bid by plaintiff, representation of plaintiff at sale and preparation of after sale documentation as required. Eighteen hours have been spent on this file to date.

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Plaintiff's counsel anticipates spending approximately Six hours on the file after the hearing. In light of the potential liabilities inherent in a property matter, the attendant responsibilities and the size of the mortgage debt, I find that the attorney fees requested by the plaintiff in the amount of two thousand five hundred and 00/100 (\$2,500.00) are reasonable.

13. 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 the Note and Mortgage, is as follows:

(a)	Principal due as of 08/05/2008	\$42,156.31
(b)	Interest from 07/05/2008 through 11/03/2009 at 7.95%	\$ 3,400.50
(c)	Late charges	\$ 797.24
(d)	Corporate Advance	\$ 345.00
(e)	Costs of Collections Prior to Hearing	\$ 825.00
(f)	Attorney Fees	\$ 2,500.00
	TOTAL DEBT secured by Note and Mortgage, including interest to date shown	\$50,024.05

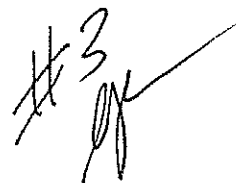
Interest for the period from the date shown in (b) above, through the date of this Judgment at the above stated rate to be added to the above stated "Total Debt" to comprise the amount of the judgment debt entered herein and interest after the date of judgment at the rate of 7.950 percent per annum (pursuant 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.

14. That the Defendant, Donna O. Johnson, is made a party by virtue of a Mortgage given by Michael Wayne Smith and Deborah Anne Smith, dated February 5, 2003, and recorded February 7, 2003, in Book 2876 at Page 962 in the amount of Fifty Thousand And 00/100 (\$50,000.00).

15. That the Defendant, South Carolina Department of Probation, Parole & Pardon Services is made a party by virtue of a Judgment against Michael Smith, dated October 21, 2006, and recorded October 23, 2006, in the amount of Sixty And 00/100 (\$60.00) and identified as JR # 290641.

16. That the Defendant, Nelson Gurley is made a party by virtue of a Judgment against Michael Smith, dated October 21, 2006 and recorded October 23, 2006, in the amount of Three Hundred And 00/100 (\$300.00) and identified as JR# 290642.

17. That the Plaintiff does not waive but specifically demands judgment against the Defendant(s), Michael Wayne Smith and Deborah Anne Smith, for the full amount found to be due to Plaintiff on the note and mortgage held by plaintiff, with the right to enter personal judgment against the Defendant(s) for any deficiency in this action remaining after sale of the mortgaged premises.



18. As a personal or deficiency judgment is demanded, the bidding will remain open for a period of thirty (30) days pursuant to S.C. CODE Ann. Section 15-39-720 (1976).

19. This Mortgage loan is not owned, securitized, or guaranteed by Fannie Mae or Freddie Mac nor is the servicer participating in the Home Affordable Modification Program.

CONCLUSION 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.

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 Fifty Thousand Twenty-Four And 05/100 Dollars (\$50,024.05) representing the "Total Debt" due Plaintiff as set forth supra, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof.

2. The amount due in the preceding paragraph (the "Total Debt" as set forth supra 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 7.950% percent per annum.

3. The amount of the judgment shall be subject to increase to permit the Plaintiff to recover additional costs, commissions and expenses not included in the minimum deposit previously made in compliance with S.C. Code Ann § 14-11-310 (1976). It may also increase to include supplemental compensation for attorney's services not contemplated by the initial fee award. Jurisdiction over the fee award and total debt is reserved to facilitate the assessment and payment of any such costs and/or supplemental compensation. Such additional costs, commissions and expenses may be established by affidavit and shall be adjudicated by the court without further hearing.

4. That the Defendants 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.

5. 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 Master in Equity at public auction at the Spartanburg 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 the 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 Five percent (5%) on the amount of the bid (in cash or equivalent) at the time of the sale, same to be applied on the

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purchase price only upon compliance with the bid, but in case of non-compliance within Twenty (20) days same to be forfeited 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 7.950 percent.

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

D. The above referenced instrument constitutes a first lien priority mortgage.

E. Purchaser to pay for Deed Stamps and costs of recording the Deed and transfer taxes on the Deed. Purchaser will pay for any statutory commission on sale from the proceeds of the sale.

6. If Plaintiff be 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, 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.

7. Fourth, Plaintiff have judgment against the Defendant, Michael Wayne Smith and Deborah Anne Smith , for the full amount found to be due Plaintiff on the note and mortgage, with right to entere personal judgment against the Defendant, Michael Wayne Smith and Deborah Anne Smith , for any deficiency in this action remaining after sale of the mortgaged premises.

8. That the 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 Twenty (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.

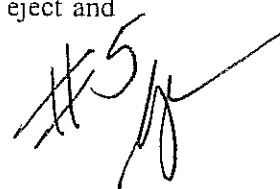
9. That the Master in Equity will apply the proceeds of the sale as follows:

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 to the 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 will be held pending further order of the court.

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 is ordered and directed to eject and

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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. And it is further ORDERED, ADJUDGED AND DECREED that each Defendant and all persons whomsoever claiming under him, her or them, 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.

12. And it is further ORDERED, ADJUDGED AND DECREED that any prior lien that has been paid in full is hereby satisfied and cancelled of record.

13. IT IS FURTHER ORDERED that the Deed of conveyance made pursuant to said sale shall contain the names of only the first named Plaintiff and the first named Defendant and the Defendant who was the titleholder 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. The Master in Equity will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance.

15. Upon issuance of a Master in Equity Report on Sale and Disbursements, the Register of Deeds is directed to release of record the mortgage lien being foreclosed, which mortgage lien is described as follows:

That Mortgage originally given to Central Carolina Bank by Michael Wayne Smith and Deborah Anne Smith , dated 02/28/2002 and recorded 03/13/2002, in Mortgage Book 2664 at page 375.

16. The following is a description of the premises herein ordered to be sold:
LEGAL DESCRIPTION AND PROPERTY ADDRESS:

All that certain piece, parcel or tract of land situate, lying and being in the State of South Carolina, County of Spartanburg, being shown and designated as 0.31 acres on survey for Michael W. Smith and Deborah A. Smith dated February 15, 1984, prepared by Wolfe & Huskey, Inc., recorded in the ROD Office for Spartanburg County in Plat Book 140 at page 859. Reference being hereby made to said plat for a more complete description as to metes and bounds.

Less and Except: All that certain parcel of land containing 2174 square fee / 0.05 acres of land, more or less, and any improvements thereon owned by Michael Wayne Smith and Deborah Anne Smith. This being a portion of the property acquired from Robert Smith, as shown as the Area of Acquisition attached Exhibit "A" on that Deed of Conveyance from Michael Wayne Smith and Deborah Anne Smith to the South Carolina Department of Transportation filed August 17, 2000 in Book 74-N at Page 74.


This being a portion of the property conveyed to Michael Wayne Smith and Deborah Anne Smith by deed from Robert Smith, dated March 13, 1984 and recorded April 6, 1984, in Book 50-H at Page 291 and re-recorded April 3, 1998, in Book 67-Q at Page 594, in the Register of Deeds Office for Spartanburg County, South Carolina.

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111 Smith Road, Moore, SC, 29369

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17. IT IS FURTHER ORDERED that if the Plaintiff or the Plaintiff's representative does not appear at the scheduled sale of the above-described property, then the sale of the property will be null, void and of no force and effect. In such event, the sale will be rescheduled for the next available sales day.



Gordon G. Cooper
Master in Equity
For Spartanburg County

Spartanburg, South Carolina
November 3, 2009.

FILED
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SPARTANBURG COUNTY
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MARC KITCHENS

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