

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Citimortgage, Inc.,

vs.

Gayle B. Acosta,

Plaintiff,

Defendant(s).

(File No. 4008.02799)

T. Lowndes Pope, Esquire
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Attorneys for Plaintiff

IN THE COURT OF COMMON PLEAS

C/A NO.: 2009-CP-42-06326

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

(Non-Jury)

(Deficiency Waived)

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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 this cause without further order of court. Any appeal from this Order shall be directly to the South Carolina Court of Appeals.

Pursuant to said Order of Reference a hearing was held on February 4, 2010, attended by attorneys of record, the testimony was taken, which is herewith reported, and from the testimony and evidence, I find, conclude and order as follows:

FINDINGS OF FACT:

- 1) The Lis Pendens was filed on October 19, 2009. An Amended Lis Pendens was filed on November 19, 2009.
- 2) The Summons and Complaint were filed on November 19, 2009.
- 3) Service was made upon the Defendant(s) as shown by the proof of service filed herein.
- 4) The Defendant(s) Gayle B. Acosta is in default as shown by affidavit or order filed herein.
- 5) The Defendant(s) and 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 individual Defendants in default are in the military service of the United States of America, as contemplated under the Servicemembers' Civil Relief Act (SCRA) of 2003, and any amendments thereto.

7) For value received, Gayle B. Acosta and Samuel Acosta made, executed and delivered a note ("Note") dated August 19, 2004, promising thereby to pay to the order of Central Carolina Bank, a Division of National Bank of Commerce the sum of One Hundred Twenty Four Thousand Four Hundred Fifty and 00/100 (\$124,450.00) Dollars, with interest at the rate of 8.2000% per annum, with a current rate of 8.2000% 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, Gayle B. Acosta and Samuel Acosta made, executed, and delivered to Central Carolina Bank, a Division of National Bank of Commerce a certain real estate mortgage ("Mortgage") in writing, dated August 19, 2004, covering real property in Spartanburg County, which is the same as that described in the Complaint. The Mortgage was filed in the Office of the Register of Mesne Conveyances/Register of Deeds for Spartanburg County on August 25, 2004, in Book 3291 at Page 6. That thereafter on March 19, 2005, the said Central Carolina Bank, a Division of National Bank of Commerce, for valuable consideration received, did transfer, assign and set over the Mortgage and the Note secured thereby unto CitiFinancial Mortgage Company, Inc., which assignment was recorded in said RMC/ROD Office on March 31, 2005, in Book 3413, at Page 717. Thereafter, on July 14, 2006, CitiFinancial Mortgage Company, Inc. merged with Citimortgage, Inc. leaving Citimortgage, Inc. as the surviving entity.

9) The Mortgage evidences and secures the repayment of money advanced by the mortgagee to, or on behalf of, the mortgagor(s) and constitutes a first mortgage lien on the mortgaged premises.

10) A Notice to Cure pursuant to the Consumer Protection Code was sent to the Mortgagors.

11) That thereafter Samuel Acosta did by deed dated June 13, 2007 convey all right, title and interest in and to the hereinabove described real property unto Gayle B. Acosta, which deed was filed for record in the ROD/RMC Office for Spartanburg County on June 15, 2007 in Deed Book 88V, at Page 295 and by Deed dated November 2, 2007 and recorded November 9, 2007 in Deed Book 89Z, at Page 742; that the Defendant(s), Gayle B. Acosta, is the owner(s)

and holder(s) of record title to the real property hereinabove described as of the date of the filing of the Notice of Pendency to this action.

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

13) The titleholder(s) of record of the subject property as of the filing of the Lis Pendens in this action is Gayle B. Acosta, who is the original mortgagors.

14) Any notice required by the terms of the Mortgage or by state or federal statutes has been given to the applicable Defendant(s) prior to the commencement of this action.

15) The loan evidenced by the Note and Mortgage is serviced by a servicer participating in the Home Affordable Modification Program (HMP). It is not owned, securitized or guaranteed by Fannie Mae or Freddie Mac. Based on the allegations in the Complaint that the subject loan is not eligible for HMP modification, the Court finds that there are no HMP issues to be resolved before foreclosure is ordered or the sale is commenced.

16) 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 its attorney for collection by foreclosure.

17) The sum of \$800.00 is a reasonable fee to allow as attorney's fees for Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of this action, under the terms of the Note and Mortgage. The inclusion of 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.

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

(a) Principal amount due as of February 4, 2010	\$120,565.09
(b) Interest from June 1, 2008 to February 4, 2010	\$16,558.46
(c) Advances	
Property Inspections, BPOs, Appraisals	\$400.50
Property Taxes	\$3,838.98
(d) Late charges	\$984.60
(e) Costs of collection prior to hearing (service of process, filing fees, etc.)	\$960.00
(f) Attorneys Fee	\$800.00
Total debt secured by Note and Mortgage, including interest to date shown	\$144,107.63

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 8.2000% 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.

19) The Plaintiff is seeking the usual foreclosure of the mortgage and has in the Complaint, or subsequently thereto in writing, expressly waived the right to a personal or deficiency judgment pursuant to Rule 71(b) SCRCF.

CONCLUSIONS OF LAW

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1) The Plaintiff's Mortgage should be declared a first mortgage lien and 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 Defendants named herein, and all persons whosoever claiming under Defendants, are forever barred and foreclosed of all right, title, interest, equity of redemption or lien in the said mortgaged premises so sold, or any part thereof.

3) Pursuant to Rule 53, SCRCF, this Order shall constitute a final judgment.

4) There is due to the Plaintiff on the Note and Mortgage set forth in the Complaint the sum of \$144,107.63, as set out in the Findings of Fact *supra*.

5) The amount due in the preceding paragraph (the "Total Debt" as set out in the Findings of Fact *supra*, and later accrued interest on the principal), shall constitute the total judgment debt due Plaintiff and shall bear interest hereafter at the rate of 8.2000% per annum. 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 judgment figures set forth herein. It may also increase to include supplemental compensation for attorney's services not contemplated by the initial fee awarded. 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 finding.

6) The Defendants liable for the aforesaid judgment debt including interest at the rate of 8.2000% per annum 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.

7) 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, at public auction, at the 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 such event, the sales day shall be on some other day appointed by the Court), on the following terms, that is to say:

8) For cash: The Master in Equity, will require, at the time of the bid, a deposit of 5% of the amount of the bid (in cash or equivalent) same to be applied to purchase price if compliance is made, but in the event of non-compliance, the deposit may be forfeited without further hearing and applied first to the costs of the action and then to plaintiff's debt. Should the successful bidder at the regularly conducted sale fail or refuse to make the required deposit at time of bid or comply with the other terms of the bid within twenty (20) days, then the property may be re-sold on the same terms and conditions on some subsequent Sales Day, but at the risk of the defaulting bidder(s).

9) Interest on the balance of the bid shall be paid through the day of compliance at the rate of 8.2000%.

10) Purchaser shall pay for any statutory commission on sale from the proceeds of sale, deed preparation, costs of recording the deed, and deed stamps.

11) A personal or deficiency judgment having been waived, the bidding will not remain open after the date of sale and compliance with the bid may be made immediately.

12) The Master in Equity, will, by advertisement according to law, give notice of the time and place of such 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 if, upon such sale being made, the purchaser, or purchasers, should fail to comply with the terms thereof within twenty (20) days after the conclusion of the bidding, 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.

13) 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 day upon the terms and conditions as set forth in this Judgment of Foreclosure and Sale or such terms as may be set forth in a supplemental order.

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

15) The 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 (including attorney fees) or so much thereof as the purchase money will pay on the same;

NEXT: Any surplus should be held pending further Order of this court.

16) In the event the successful bidder is other than the Defendant(s) in possession herein, and upon full compliance, 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 full, quiet, and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.

17) In accordance with S.C. Code Ann. §30-9-31, the deed of conveyance made pursuant to said sale shall be indexed by the R.M. C. 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 Master in Equity, who executes such deed as grantor.

18) The undersigned will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance.

19) The following is a description of the premises herein ordered to be sold:

All that certain piece, parcel or lot of land, with all improvements thereon, situate, lying and being in the State of South Carolina, County of Spartanburg, being shown and designated as Lot No. 10, Block A of Hillbrook Forest, containing .46 acres, more or less, fronting on Hillbrook Drive on a plat of a survey for Gayle B. Acosta by Archie S. Deaton & Associates, Land Surveyors, dated October 3, 1995, and recorded on October 6, 1995, in Plat Book 131, at Page 092 in the RMC Office for Spartanburg County, SC.

This property is subject to the Restrictions recorded in Deed Book 24-I, at Page 627 in the RMC Office for Spartanburg County, SC.

This being the same property conveyed to Gayle B. Acosta by Deed from Sherrine Susan Pearson, dated October 5, 1995, and recorded on October 6, 1995, in Deed Book 63-J, at Page 238 in the RMC Office for Spartanburg County, SC. Gayle B. Acosta conveyed an undivided on half interest to Samuel Acosta by Deed dated August 19, 2004, and recorded August 25, 2004, in Deed Book 81B, at Page 48. Thereafter Samuel Acosta did by deed dated June 13, 2007, convey all right, title and interest in and to the hereinabove described real property unto Gayle B. Acosta, which deed was filed for record in the ROD/RMC Office for Spartanburg County on June 15, 2007, in Deed Book 88V, at Page 295 and by Deed dated November 2, 2007, and recorded November 9, 2007, in Deed Book 89Z, at Page 742.

TMS No. 7-09-15-004.00

Property Address: 119 Hillbrook Drive, Spartanburg, SC 29307

Honorable Gordon G. Cooper
Master in Equity Spartanburg County

February _____, 2010
Spartanburg, South Carolina

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