

.F21585

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

GMAC Mortgage, LLC,

PLAINTIFF,

VS.

Amanda Smith; K. Scott Smith; South Carolina Employment Security Commission; Gary Conley; Lisa Craig Bishop; Kevin Brown; Tammy Brown; Financial Trust, Inc.; Regional Finance Corp.; and South Carolina Department of Revenue,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS
C/A NO: 2007-CP-42-3053

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

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

ANSWERING DEFENDANTS:

Romi Y. Robinson
Attorney for Defendant
South Carolina Employment Security
Commission

Ronald W. Urban
Attorney for Defendant
South Carolina Department of Revenue

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:

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Lis Pendens was filed on August 29, 2007.
2. The Summons and Complaint were filed on August 29, 2007.
3. Service was made upon the Defendant(s) named in this Report as is shown by the proof(s) of service filed herein.
4. The Defendant(s) Amanda Smith; K. Scott Smith; Gary Conley; Lisa Craig Bishop; Kevin Brown; Tammy Brown; Financial Trust, Inc.; Regional Finance Corp.; are in default as shown by Affidavit(s) on file herein.
5. Romi Y. Robinson, Attorney for Defendant, South Carolina Employment Security Commission, served an Answer on the Plaintiff, which is on file herein.
6. Ronald W. Urban, Attorney for Defendant, South Carolina Department of Revenue, served an Answer on the Plaintiff, which is on file herein.
7. 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.
8. According to the Affidavit filed herein, the Defendant(s) Amanda Smith; K. Scott Smith; Gary Conley; Lisa Craig Bishop; Kevin Brown; Tammy Brown; 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.
9. For value received, Amanda Smith and K. Scott Smith made, executed and delivered a Note dated June 6, 2006, promising thereby to pay to the order of GMAC Mortgage Corporation, the sum of \$119,900.00, with interest at the rate of 6.875% per annum. Other terms and conditions are stated in the Note, which is of record herein.
10. To better secure the payment of the Note described above, the said Amanda Smith and K. Scott Smith made, executed and delivered to Mortgage Electronic Registration Systems, Inc. as nominee for GMAC Mortgage Corporation, a Mortgage in writing, dated June 6, 2006, covering real property in Spartanburg County, which is the same as that described in the Complaint. The Mortgage was filed on June 12, 2006, and is of record in the Office of the Register of Deeds for Spartanburg County in Book 3681 at Page 128.
11. This Mortgage constitutes a first mortgage lien on the subject property and is a Purchase Money Mortgage.
12. By Assignment of Mortgage dated September 5, 2007, and recorded September 11, 2007, in Book 3963 at Page 561, in the Office of the Register of Deeds for Spartanburg County, Mortgage Electronic Registration Systems, Inc. as nominee for GMAC Mortgage Corporation n/k/a GMAC Mortgage, LLC assigned the subject Note and Mortgage to GMAC Mortgage, LLC, the present lienholder and Plaintiff herein.

13. The titleholder(s) of record in and to the subject property as of the filing of the Lis Pendens in this action are K. Scott Smith and Amanda 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 \$4,500.00 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 June 1, 2007	\$125,509.37
Interest from May 1, 2007 through February 22, 2010 at 6.875%	10,577.08
Escrow adjustments (debits and credits)	2,489.17
Suspense Balance	(261.54)
NSF Fees	25.00
Speedpay Fee	15.00
Prop Inspection Fee	101.25
Late charges	804.46
Costs of collection prior to hearing	1,747.08
Attorney Fees	4,500.00
TOTAL DEBT secured by Note and Mortgage, including interest to date shown	\$145,506.87

Interest for the period from February 22, 2010 as shown above at the stated rate of 6.875% 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 6.875% 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.

18. Upon information and belief, said information obtained from the public records of Spartanburg County, the following Defendant(s) claim(s), or may claim a lien upon or interest in the subject property as follows:

- (a) South Carolina Employment Security Commission, by virtue of the following Tax Executions against Scott Smith T/A Precision Plastics #247802:
 - i. dated March 25, 1998, and recorded March 30, 1998, Judgment Roll Number 212047, in the amount of \$6,199.86;
 - ii. dated May 13, 1998, and recorded May 19, 1998, Judgment Roll Number 213505, in the amount of \$583.32;
 - iii. dated September 22, 1999, and filed September 27, 1999, Judgment Roll Number 230624, in the amount of \$808.52;
- (b) Gary Conley, by virtue of a judgment against Scott Smith, dated July 14, 2000, filed July 25, 2000, Judgment Roll Number 241443, in the amount of \$5,060.00.
- (c) Lisa Craig Bishop, by virtue of a judgment against Tammy Smith and Scott Smith, dated November 10, 2000, filed November 21, 2000, Judgment Roll Number 244760, in the amount of \$1,860.00.
- (d) Kevin Brown and Tammy Brown, by virtue of a judgment against Scott Smith, dated February 9, 2001, filed November 17, 2000, Judgment Roll Number 247193, Case Number 00-CP-42-3143, in the amount of \$5,650.00.
- (e) Financial Trust, Inc., by virtue of a judgment against Scott Smith, dated May 24, 2001, filed June 13, 2001, Judgment Roll Number 251584, in the amount of \$7,560.00.
- (f) Regional Finance Corp., by virtue of a judgment against Scott Smith, filed August 5, 2002, Judgment Roll Number 262186, in the amount of \$299.85.
- (g) South Carolina Department of Revenue, by virtue of a State Tax Lien against K. Smith, dated November 21, 2005, and recorded December 7, 2005, Tax Lien Number 3-50663771-8, in Book S-24 at Page 327, in the amount of \$2,346.13.

The interests or liens of the above Defendants, if any, are junior and subordinate to the plaintiff's purchase money mortgage.

18. Based upon the Chief Justice's Administrative Order 2009-05-22-01, and the affidavits presented pursuant thereto, I find the HMP requirements have been satisfied without resulting in modification and the within captioned action is not or is no longer stayed by the above-referenced order.

IT IS THEREFORE ORDERED:

1. There is due to Plaintiff on the obligation and Mortgage set forth in the Complaint the sum of \$145,506.87, 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 6.875%.

3. Based on the allegations in the Complaint, the default of the defendant Tammy Brown, and the evidence presented, I hereby order the judgment obtained by Tammy Brown

4. 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.

5. 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 6.875%.
- 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, upon full compliance with the bid, the Sheriff of Spartanburg County is ordered and directed to eject and remove from the premises the occupants 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.

10. **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.

11. **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.

12. **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.

13. **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.

14. 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.

15. 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 Amanda Smith and K. Scott Smith to Mortgage Electronic Registration Systems, Inc. as nominee for GMAC Mortgage Corporation dated June 6, 2006 and recorded in the Office of the Register of Deeds for Spartanburg County on June 12, 2006 in Book 3681 at Page 128.

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

All that certain piece, parcel or lot of land, with any and all improvements 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 of PAUL'S CROSSING, dated February 14, 2005 and recorded April 20, 2005 in the Register of Deeds Office for Spartanburg County, South Carolina in Plat Book 157 at Page 822 and having such courses and distances as will appear by reference to said plat.

TMS #: 6-17-00-042.07

Property Address: 1340 Martin Rd., Spartanburg, SC

This being the same property conveyed to K. Scott Smith and Amanda Smith by deed of M & S Construction, LLC, dated June 6, 2006 and recorded in the Office of the Register of Deeds for Spartanburg County on June 12, 2006 in Deed Book 85-Z at Page 25.

Spartanburg, South Carolina

_____, 2010

Gordon G. Cooper
Master in Equity for Spartanburg County

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