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STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

The Bank of New York Mellon f/k/a The Bank of New York as successor to JPMorgan Chase Bank, N.A. as trustee for FFMLT 04-FF10,

PLAINTIFF,

vs.

The Estate of James B. Johnson, and any Heirs, Personal Representatives, Successors, Assigns, Spouses, Creditors, and all others claiming any right, title or interest in the real estate known as 413 McFall Ct, Moore, SC 29369, any adults or persons in the Military Service of the United States of America, being a class designated as John Doe, and any minors or persons under legal disability, being a class designated as Richard Roe; and South Carolina Department of Revenue,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS
C/A NO: 09-CP-42-5066

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

FILED
CLERK OF COURT
2010 FEB 22 PM 3:50

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:

Kelley Y. Woody, Attorney for any unknown defendants who may be in the Military Service, and Guardian Ad Litem Nisi for any unknown defendants who may be minors or under legal disability and are heirs of the deceased

Ronald W. Urban, Chief Counsel for Litigation
Attorney for Defendant
SC Department of Revenue

Pursuant to Rule 53 SCRCP, 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. The Lis Pendens was filed on September 14, 2009, and an Amended Lis Pendens was filed on September 21, 2009.

2. The Summons and Complaint were filed on September 14, 2009 and Amended Summons and Complaint were filed on September 21, 2009.

3. An Order of Publication was issued by the Court and filed on November 5, 2009.

4. The Order of Appointment of Guardian Ad Litem Nisi was filed on November 2, 2009.

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

6. Kelley Y. Woody, Attorney for any unknown Defendants who may be in the military service and Guardian Ad Litem Nisi for any unknown Defendants who may be minors or under legal disability and are heirs of the deceased, served Answer(s) on the Plaintiff, which is on file herein.

7. Ronald W. Urban, Chief Counsel for Litigation, Attorney for Defendant SC Department of Revenue, served Answer(s) on the Plaintiff, which is on file herein.

8. 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.

9. According to the Affidavit filed herein, the Defendant(s) James B. Johnson 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.

10. For value received, James B. Johnson made, executed and delivered a Note dated August 30, 2004, promising thereby to pay to the order of First Franklin Financial Corp., subsidiary of National City Bank of Indiana, the sum of \$100,000.00, with interest at the rate of 7.375% per annum. Other terms and conditions are stated in the Note, which is of record herein.

11. To better secure the payment of the Note described above, the said James B. Johnson made, executed and delivered to First Franklin Financial Corp., subsidiary of National City Bank of Indiana, a Mortgage in writing, dated August 30, 2004, covering real property in Spartanburg County, which is the same as that described in the Complaint. The Mortgage was filed on September 7, 2004, and is of record in the Office of the Register of Deeds for Spartanburg County in Book 3298 at Page 726.

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

13. By Assignment of Mortgage recorded September 15, 2009, in Book 4275 at Page 515, in the Office of the Register of Deeds for Spartanburg County, First Franklin Financial Corp., subsidiary of National City Bank of Indiana assigned the subject Note and Mortgage to The Bank of New York Mellon f/k/a The Bank of New York as successor to JPMorgan Chase Bank, N.A. as trustee for FFMLT 04-FF10, the present lienholder and Plaintiff herein.

14. 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 based upon due to the fact that the subject property is vacant.

15. James B. Johnson died on or about February 2, 2009, and no estate has been filed in the Spartanburg County Probate Court. There may be heirs unknown to the Plaintiff who may have an interest in subject property. Therefore, any heirs are made parties hereto so that they may present any such adverse claim or be forever barred from doing so, any adults or persons in the Military Service of the United States of America, being a class designated as John Doe, and any unknown minors or persons under legal disability, being a class designated as Richard Roe.

16. The titleholder of record in and to the subject property as of the filing of the Lis Pendens in this action is James B. Johnson.

17. 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.

18. Kelley Woody, Esquire a member of the South Carolina Bar, has been appointed attorney for any unknown Defendants, who may be in the Military Service within the meaning of the Servicemembers Civil Relief Act (2003), as amended and has filed an answer, appeared and actively participated herein for said Defendant(s). Plaintiff would request the sum of One Hundred Fifty (\$150.00) Dollars as a reasonable fee for such attorney's services rendered and to be rendered herein until final adjudication of the within action.

19. Kelley Woody, Esquire a member of the South Carolina Bar, has been appointed Guardian Ad Litem Nisi for any unknown Defendants, who may be minors or otherwise under legal disability, and she has filed an answer, appeared and actively participated herein for said Defendants. Plaintiff would request the sum of One Hundred Fifty (\$150.00) Dollars as a reasonable fee for such attorney's services rendered and to be rendered herein until final adjudication of the within action.

20. 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.

21. 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 February 1, 2009	\$ 94,663.66
Interest from January 1, 2009 through February 22, 2010 at 7.375%	7,964.94
Escrow adjustments (debits and credits)	1,998.95
Corporate Advance	983.86
Late charges	69.06
Costs of collection prior to hearing	1,771.99
Attorney Fees	4,500.00
TOTAL DEBT secured by Note and Mortgage, including interest to date shown	\$111,952.46

Interest for the period from February 22, 2010 as shown above at the stated rate of 7.375% 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 7.375% on the total judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the Mortgage.

22. 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.

23. South Carolina Department of Revenue claim(s), or may claim a lien upon or interest in the subject property as follows:

- (a) by virtue of a State Tax Lien against James Johnson and Robin Reed, dated November 10, 1999, and recorded November 29, 1999, Tax Lien Number 3-50240086-0, in the amount of \$464.54.
- (b) by virtue of a State Tax Lien against James Johnson dated February 5, 2007, and recorded February 16, 2007 as Tax Lien Number 3-50780000-7, recorded in book S-33 at page 614, in the amount of \$3,809.91.

The interest or liens of the above Defendant, if any, are junior and subordinate to the plaintiff's Purchase Money Mortgage.

IT IS THEREFORE ORDERED:

1. There is due to Plaintiff on the obligation and Mortgage set forth in the Complaint the sum of \$111,952.46, 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 7.375%.

3. Based on the allegations of the Complaint and the evidence provided, I hereby order the unknown defendants claiming under the Estate of James B. Johnson have been provided with proper notice and the opportunity to appear, do not have a claim to or interest in the real property and are, therefore, forever barred from claiming any interest in the subject property.

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 7.375%.
- 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 and is a Purchase Money Mortgage.
- E. Purchaser to pay for deed preparation and costs of recording the Deed, and transfer taxes.

6. 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.

7. 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.

8. 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.

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 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.

10. **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.

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 James B. Johnson to First Franklin Financial Corp., subsidiary of National City Bank of Indiana dated August 30, 2004 and recorded in the Office of the Register of Deeds for Spartanburg County on September 7, 2004 in Book 3298 at Page 726.

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

All that certain piece, parcel or lot of land in Spartanburg County, State of South Carolina shown and designated as Lot No. 36 of Anderson Hills, Section I, dated October 31, 1996 and revised January 23, 1997, made by John Robert Jennings, RLS and recorded in Plat Book 136, Page 602, RMC Office of Spartanburg County.

TMS Number: 6-39-00-018.12

PROPERTY ADDRESS: 413 McFall Ct, Moore, SC

This being the same property conveyed to James B. Johnson by deed of Terry L. Stroud, Jr., and Nicole B. Stroud, dated August 30, 2004 and recorded in the Office of the Register of Deeds for Spartanburg County on September 7, 2004 in Deed Book 81D at Page 224.

Gordon G. Cooper
Master in Equity for Spartanburg County

Spartanburg, South Carolina

_____, 2010

FILED
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SPARTANBURG COUNTY
2010 FEB 22 PM 3:51