

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Chase Home Finance LLC,

PLAINTIFF,

VS.

Larry Dale Durham

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

CASE NO. 2009-CP-42-5875

MASTER IN EQUITY'S
ORDER AND JUDGMENT
OF FORECLOSURE AND SALE

DEFICIENCY WAIVED

Non-Eligible under the Home Affordable
Modification Program

NOTICE: The original of this document was filed in
the office of the Clerk of Court for Spartanburg
County:

File Number 090268.00988

TO: Ronald C. Scott, SC Bar #4996
Elizabeth R. Polk, SC Bar #11673
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ATTORNEYS FOR THE PLAINTIFF
2712 Middleburg Drive, Suite 200
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(803) 252-3340

Larry Dale Durham
120 Shore Heights Drive
Inman, SC 29349

2010 JAN 20 PM 3:43
MARC KITCHENS

Pursuant to Circuit Court Rule 53(e) of the South Carolina Rules of Civil Procedure, the above-entitled matter was referred to the undersigned to make appropriate findings of facts 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. A Record of Hearing was presented, which is herewith reported, and from the Record of Hearing and the documents and records received into evidence, I find, conclude and order as follows:

FINDINGS

This Court has jurisdiction over the subject matter of this action and the parties hereto and it is the proper forum for the litigation of this matter.

1. Based upon the facts and/or evidence presented, the Court has determined that this loan is not eligible under the Home Affordable Modification Program.

2. The Lis Pendens was filed on October 26, 2009.

3. The Summons and Complaint were filed on October 26, 2009.

4. Service was made upon the Defendants named in this Report as is shown by the proofs of service filed herein.

5. The Defendant(s), Larry Dale Durham, is in default as is shown by the affidavit filed herein.

6. The Defendants and/or all attorneys of record were notified of the time, date, and place of the hearing of this matter.

7. According to the affidavit filed herein, any Defendant in default is not in the Military Service of the United States of America, as contemplated under The Servicemembers' Civil Relief Act of 2003 and any amendments thereto.

8. For value received, Defendant(s), Larry Dale Durham, made, executed and delivered a Note dated January 12, 2007, promising thereby to pay to the order of First Palmetto Mortgage, Inc. the sum of \$300,000.00 with interest at the rate of 5.875% per annum. Other terms and conditions are stated in the Note, which is of record herein.

9. To better secure the payment of the Note described above, the said Defendant(s), Larry Dale Durham, made, executed and delivered to Mortgage Electronic Registration Systems, Inc. acting as nominee for First Palmetto Mortgage, Inc. a Mortgage in writing, dated January 12, 2007, covering real property in Spartanburg County, which is the same as that described in the Complaint. The Mortgage was filed on January 19, 2007, and is of record in the Office of the Clerk of Court for Spartanburg County in Book 3821, at Page 628. The Mortgage evidences and secures the repayment of money advanced by the mortgagee to, or on behalf of, the mortgagor(s). The Court finds also that this mortgage constitutes a first lien on the mortgaged premises and a purchase money lien as may apply under state law as well as the After Acquired Property Doctrine. Thereafter, said Note and Mortgage being assigned to

Chase Home Finance LLC by assignment dated October 29, 2009 and recorded November 6, 2009 in Book 4294 at Page 137.

10. That the Court finds that the Plaintiff has complied with its obligation(s) as required under the specific terms of the Note and Mortgage being foreclosed as well as any applicable Federal or State statutes or regulations including but not limited to, the furnishing of any notices required to be given to the obligor(s) which gives to such person(s) the right to cure any default arising under the specific terms of the recited Note and Mortgage herein; the review of this mortgage loan for compliance with the Home Affordability Modification Program (HMP), if applicable; and that moreover and prior to the filing of this judicial proceeding, the Defendant(s) had not raised any compliance defense or objections as to the servicing of any applicable banking or consumer laws by the Plaintiff.

11. Payment due on the note has not been made as provided for in the note, 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. With respect to attorney fees and in view of the potential financial liabilities and likely continuing professional obligations inherent in legally prosecuting a real property credit matter, the attendant professional duties and responsibilities, and the size of the mortgage debt, I find that a reasonable attorney's fee in this matter would be \$4,000.00. This award is consistent with and pursuant to the common laws of this jurisdiction wherein our appellate courts have consistently held that any contract for fees that may exist or exists between the lawyer and the client (in addition to not being one of the six (6) fee review factors) is not binding on the trial court on the determination of the reasonableness of the fee. Jackson v. Speed, 326 S.C. 289, 486 S.E.2d 750(1997); Rice v. Multimedia, Inc., 318 S.C. 95, 456 S.E.2d 381 (1995); and Williamson v. Middleton, 374 S.C. 419, 649 S.E.2d 57 (Ct. App. 2007). Total representation of the Plaintiff's interests in this matter have been undertaken, including among many duties the researching of the referral file to serving as custodian of the loan documents to the filing of all pleadings and other legally required documents with the court, by the Scott Law Firm, P.A. Moreover, this Trial Court has specifically examined, and made its award herein of attorney fees to Counsel for the Plaintiff in compliance with the six (6) factors identified and enumerated in Baron Data Systems v. Loter, 297 S.C. 382, 377 S.E.2d 296 (S.C. 1989).

13. On receiving testimony and other evidence during this hearing, I find that the Scott Law Firm, P.A., was engaged by the Plaintiff to foreclose the mortgage as expeditiously as possible, given the detriment to Plaintiff's equity position as a direct result of increasing losses from the accrual of interest and related adverse economic conditions such as depreciation or possible damage to the collateralized property. Upon receipt of the case file, the title was examined and studied to identify all parties having or claiming an interest in the subject real estate as well as being researched for salient legal questions and issues. Various attorneys as well as experienced paralegal staff have been responsible for (and expended extensive professional time) in the preparation of the following pleadings and other legally required services and documents:

1. Lis Pendens and any amendment thereto
2. Summons and Complaint and any amendment thereto
3. Affidavits and proposed Order of Publication
4. Affidavit of Default
5. Consent(s) to Order of Reference
6. Order of Reference
7. Notice of Hearing
8. Proposed Judgment of Foreclosure and Sale
9. Record of Hearing
10. Notice of Sale
11. Other documents as applicable pertaining to service and finalization of the action.

Counsel may also prepare for the Plaintiff the Statutory Foreclosure Deed and any other documents necessary in this particular action as ordered or authorized by this Court.

Jurisdiction over the fee award shall be reserved as granted in the Order of Reference with the right to re-visit the question of attorney fees should the action proceed in an unexpected way and/or to facilitate the assessment and payment of any such current or additional professional compensation.

14. The amount due and owing on the Note, with interest at the rate provided in the Note, including attorney's fee and allowable costs and charges allowable under and secured by the Note and Mortgage, is as follows:

(a) Principal due	\$290,844.83
(b) Interest from June 1, 2009 to January 20, 2010	\$ 10,903.79
(c) Late Charges	\$ 354.92
(d) Escrow Adjustments (Itemized in Plaintiffs	\$ 3,761.63

	Affidavit)	
(e)	Costs of collection prior to hearing	\$ 761.33
(f)	Previous bankruptcy fees	\$ 0.00
(g)	Attorney's fees and costs	
	(Foreclosure & applicable Bankruptcy)	<u>\$ 4,000.00</u>
	TOTAL DEBT secured by note and mortgage including interest to date shown	<u>\$310,626.50</u>

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 5.8750% 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.

15. Based upon a search of the public records of the aforesaid county, all persons or entities having an interest or lien or possible claim in or upon the mortgaged premises subordinate to the lien of the Plaintiff as of the date and time of the filing of the Lis Pendens herein have been made defendants.

16. The Plaintiff is seeking the usual foreclosure of mortgage and has in the Complaint, or by amendment thereto, or by motion at the reference, expressly waived the right to a personal or deficiency judgment.

17. No Defendant raised any issues related to Plaintiffs standing to prosecute this action. Therefore, any issues related to Plaintiffs standing or ability to prosecute this action are waived.

CONCLUSIONS OF LAW

I therefore, conclude as follows:

1. The Plaintiff has met the requirements of the Administrative Order of the South Carolina Supreme Court (2009-05-22-01) issued by Chief Justice Jean H. Toal, dated May 22, 2009, and has shown that this loan is not eligible under the Home Affordable Modification Program.

2. The Plaintiff should have judgment of foreclosure of the mortgage and the mortgaged property should be ordered sold at public auction after due advertisement.

Now, on motion of Plaintiff's attorney,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. The Plaintiff has met the requirements of the Administrative Order of the South Carolina Supreme Court (2009-05-22-01) issued by Chief Justice Jean H. Toal, dated May 22, 2009, and has shown that this loan is not eligible under the Home Affordable Modification Program.

2. This case is not subject to the stay provisions of the Order of the Supreme Court of South Carolina dated May 4, 2009, as amended and superceded by Order dated May 22, 2009.

3. That there is due to the Plaintiff on the obligation and mortgage set forth in the Complaint the sum of \$310,626.50, 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.

4. The amount due in the preceding paragraph (the "total debt" as set forth in Paragraph hereinabove, 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 5.8750% percent per annum.

5. 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 the Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

6. 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 undersigned at public auction, after giving Notice of the time and place of such sale by advertisement according to law. Any sales date is tentative and may be rescheduled at any time prior to the sale without further order of this court or written notice to the parties of the notice of sale, provided notice of the new sales date is duly advertised as required by law. The sale shall be according to the following terms, that is to say:

a. FOR CASH: The undersigned Master in Equity will require a deposit of 5% on the amount of the bid (in cash or equivalent), said 5% deposit being due and payable immediately upon the closing of the bidding, same to be applied to the purchase price only upon

compliance with the bid, but in case of non-compliance within 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 5.8750% percent.

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

d. This mortgage constitutes a first lien covering the real estate and improvements therein described, including any mobile home located thereon. Plaintiff would further allege and avail itself of the Purchase Money Mortgage Doctrine as may apply to the facts of this action.

e. Purchaser to pay for deed stamps and cost of recording the deed with the Plaintiff to pay the Statutory allowed fee of \$25.00 to the preparer of said deed (be it this Court or Counsel for Plaintiff).

7. If Plaintiff be the successful bidder at said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of Plaintiff in full, the Plaintiff may pay to the Clerk of Court only the amount of the costs and expenses crediting the balance of the bid on Plaintiff's indebtedness.

8. No personal or deficiency judgment being demanded, the bidding will not remain open after the date of sale, but compliance with the bid may be made immediately.

9. That the Master in Equity will by advertisement according to law, give notice of the time and place of such sale, and the terms thereof. Any sales date is tentative and may be rescheduled at any time prior to the sale without further order of this court or written notice to the parties of the notice of sale, provided notice of the new sales date is duly advertised as required by law. Master in Equity 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 20 days after the 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. In the event the Plaintiff is the successful bidder, at its/his option, or the option of its/his assignee, the deed may be taken subject to payment by grantee of any taxes or assessments constituting a lien against the property sold under this order and hereinafter more

fully described. In the event the successful bidder is a third party, neither the Plaintiff nor Plaintiff's counsel make any warranties or representations as to the subject property on behalf of the third party bidder.

10. The sale will not be held unless the Plaintiff, its attorney, or its bidding agent is present at the sale or has advised the Master in Equity's office of its bidding instructions.

11. In the event of a third party bidder and that any third party bidder fails to deliver the required deposit in certified (immediately collectible) funds to the Office of the Master in Equity by close of bidding on the day of the sale, the Master in Equity will re-sell the subject property at the most convenient time thereafter (including the day of sale) upon notification to counsel for Plaintiff.

12. That the Master in Equity shall apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of the costs and expense of this action, including any Guardian ad Litem fee or fees of attorneys appointed under Order of the Court;

NEXT: To the payment to the Plaintiff or Plaintiff's attorney, of the amount of Plaintiff's debt and interest or so much thereof as the purchase money will pay on the same; and Plaintiff's attorney shall receive and disburse such funds only in total and absolute compliance with the debt, interest, escrow, and related calculations of this Court including the Court's award for attorney fees and taxable costs;

NEXT: Any surplus will be held pending further order of the Court as provided for in the South Carolina Rules of Civil Procedure and particularly Rule 71(c) of the South Carolina Rules of Civil Procedure.

13. It is further ORDERED, that if the successful bidder is other than the Defendant in possession herein, the Sheriff of Spartanburg County is ordered and directed to evict 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.

14. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the South Carolina Department of Motor Vehicles is directed and ordered to provide the new Certificate of Title to the attorneys for the Plaintiff as agent for the grantee on the deed upon payment of the required title fees on any mobile home which is herein located on the subject property and intended to be collateralized by the Plaintiff's security documents as heretofore received into

evidence by this Court, or which may be received into evidence at any necessary hearing post sale of the subject property.

15. And it is further ORDERED, ADJUDGED AND DECREED that Defendant named herein and all persons whosoever claiming under him, them or it, be forever barred and foreclosed of all right, title and interest and equity of redemption in the said mortgaged premises so sold, or any part thereof.

16. 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 the filing of the notice of pendency of the within action, and the name of the grantee, and the Clerk of Court/Register of Deeds is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

17. The Master in Equity will retain exclusive jurisdiction to do all necessary acts incident to this foreclosure, including, but not limited to, all matters post-sale which may effect the transfer of the title to the subject real property and all improvements thereon, as well, the issuance of a Writ of Assistance.

18. Upon issuance of a Master in Equity's 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:

Mortgage from Larry Dale Durham to Mortgage Electronic Registration Systems, Inc. acting as nominee for First Palmetto Mortgage, Inc., dated January 12, 2007, covering real property in Spartanburg County, filed on January 19, 2007, and is of record in the Office of the Register of Deeds for Spartanburg County in Book 3821, at Page 628.

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

ALL that certain piece, parcel or lot of land, with improvements thereon or to be constructed thereon, lying and being situate in the County of Spartanburg, State of South Carolina, and being shown and designated as Lot #50 of South Shore Heights, Phase I, according to a plat by Gramling Bros. Surveying, Inc., recorded in Plat Book 155, Page 713, in the RMC Office for Spartanburg County, SC, reference to which is hereby made for a more complete and accurate description thereof.

This being the same property conveyed to Larry Dale Durham by deed of Durham Construction, Inc. dated January 12, 2007 and recorded on January 19, 2007 in the Office of the Spartanburg County Register of Deeds in Book 87-R at Page 244.

TMS No. 6 05.00 192.00

Property address: 120 Shore Heights Drive, Inman, SC 29349

20. 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 as ordered by this court.

21. No Defendant raised any issues related to Plaintiff's standing to prosecute this action. Therefore, any issues related to Plaintiff's standing or ability to prosecute this action are waived.

Gordon G. Cooper
Master in Equity for Spartanburg County

Spartanburg, South Carolina
January 20, 2010

FILED
SPARTANBURG COUNTY
2010 JAN 20 PM 3:43
MARC KITCHENS