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STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

The Bank of New York Mellon FKA The Bank of New York, as Trustee for the Certificateholders CWabs, Inc., Asset-Backed Certificates, Series 2005-AB2,

PLAINTIFF,

vs.

Lynley D. Murph; Carl Leray Linder a/k/a Carl E. Linder, Individually and as Personal Representative of the Estate of Lois H. Murph; US West Financial Services Inc.; and South Carolina Department of Motor Vehicles,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS  
C/A NO: 09-CP-42-2081

**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: Frank L. Valenta, Jr., Esquire  
Attorney for Defendant  
South Carolina Department of Motor Vehicles

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 April 10, 2009 and an Amended Lis Pendens was filed on May 13, 2009.

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2. The Summons and Complaint were filed on April 10, 2009 and Amended Summons and Complaint were filed on May 13, 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. The Defendants, Lynley D. Murph; Carl Leray Linder a/k/a Carl E. Linder; and US West Financial Services Inc , are in default as shown by Affidavit(s) on file herein.
5. Frank L. Valenta, Jr., Esquire, Attorney for Defendant, South Carolina Department of Motor Vehicles, served Answer(s) on the Plaintiff, which is on file herein.
6. 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.
7. According to the Affidavit filed herein, the Defendants, Lynley D. Murph and Carl Leray Linder a/k/a Carl E. Linder, 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.
8. For value received, Lynley D. Murph made, executed and delivered a Note dated May 9, 2005, promising thereby to pay to the order of Your-Best-Rate Financial, L.L.C., the sum of \$112,200.00, with interest at an adjustable rate pursuant to the terms of the Note. 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 Lynley D. Murph made, executed and delivered to Mortgage Electronic Registration Systems Inc., as nominee for Your-Best-Rate Financial, L.L.C., a Mortgage in writing, dated May 9, 2005, covering real property in Spartanburg County, which is the same as that described in the Complaint. The Mortgage was filed on May 20, 2005, and is of record in the Office of the Register of Deeds for Spartanburg County in Book 3444 at Page 457.
10. This Mortgage constitutes a first mortgage lien on the subject property.
11. By Assignment of Mortgage dated April 1, 2009 and recorded April 21, 2009 in Book 4211 at Page 818, in the Office of the Register of Deeds for Spartanburg County, Mortgage Electronic Registration Systems Inc., as nominee for Your Best Rate Financial, LLC. assigned the subject Note and Mortgage to The Bank of New York Mellon FKA The Bank of New York, as Trustee for the Certificateholders CWabs, Inc., Asset-Backed Certificates, Series 2005-AB2, the present lienholder and Plaintiff herein.
12. The parties intended that the 1986 American Sunshine mobile home, serial number ALSB614X60FKSN10259, located on the real property, as well as the land described in the mortgage secure plaintiff's loan.

13. In reliance upon the representations of the defendant, Lynley D. Murph, the property, including the 1986 American Sunshine mobile home, serial number ALSB614X60FKSN10259, was appraised and, in reliance upon the appraised value of the entire property, including the land and the mobile home, a mortgage loan was made to the defendant Lynley D. Murph.

14. From information obtained from the Spartanburg County Tax Assessor's records the 1986 American Sunshine mobile home, serial number ALSB614X60FKSN10259, located on the real property, is being assessed under the same parcel number as the real estate as a permanent fixture in the defendant's name Lynley D. Murphy.

15. The 1986 American Sunshine mobile home, serial number ALSB614X60FKSN10259, which is attached to the real property, as well as the land described in the mortgage, secure the plaintiff's loan.

16. The titleholder of record in and to the subject real property as of the filing of the Lis Pendens in this action is Lynley D. Murph.

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. 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.

19. 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 September 1, 2008  | \$108,909.20        |
| Interest from August 1, 2008<br>through October 28, 2009<br>at 10.75%                  | 14,204.98           |
| Escrow adjustments (debits and credits)  | 2,147.33            |
| Corporate Advance  | 2,118.00            |
| Late charges   | 103.42              |
| Cost of collection prior to hearing  | 282.00              |
| Attorney Fees  | 4,500.00            |
| <b>TOTAL DEBT</b> secured by Note and<br>Mortgage, including interest to date<br>shown | <b>\$132,264.93</b> |

Interest for the period from October 28, 2009 as shown above at the stated rate of 10.75% 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 10.75% on the total judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the Mortgage.

20. 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.

21. The South Carolina Department of Motor Vehicles is made a party hereto since it is a governmental agency responsible for issuing certificates of title for mobile homes and/or retiring or detitling certificates of title for mobile homes in South Carolina.

The Plaintiff seeks an order requiring this defendant either to issue a certificate of title for the 1986 American Sunshine mobile home, Serial No. ALSB614X60FKSN10259, free and clear of any liens to the successful purchaser at foreclosure sale or to detitle or retire the title to the mobile home.

22. From information obtained from the public records of South Carolina Department of Motor Vehicles, the Current Title Number 000000023144597A for the 1986 American Sunshine mobile home, Serial Number ALSB614X60FKSN10259, located on the subject property was issued August 13, 1992 and reflects:

(a) Lois Murph, as the owner (now deceased).

The above defendant does not have any interest in the mobile home.

(b) US West Financial Services Inc. as the Lien Holder.

The debt secured by the lien upon the mobile home has been paid and satisfied, and the defendant does not have any interest in the mobile home.

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23. 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 \$132,264.93, 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 10.75%.

3. Based on the allegations in the Complaint and the evidence presented, I hereby order Plaintiff's loan is also secured by the 1986 American Sunshine Mobile Home, Serial Number ALSB614X60FKSN10259, located on the subject real property.

4. Based on the allegations of the Complaint and the evidence provided, I hereby order that the Defendant, Carl Leray Linder a/k/a Carl E. Linder, Individually and as Personal Representative of the Estate of Lois Murph, does not have any interest in the 1986 American Sunshine Mobile Home, Serial Number ALSB614X60FKSN10259.

5. Based on the allegations in the Complaint and the evidence presented, I hereby order that the Defendant, US West Financial Services Inc., no longer has any interest in the mobile home.

6. 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.

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, 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 10.75%.
- 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.
- E. Purchaser to pay for deed preparation and costs of recording the Deed, and transfer taxes.

8. 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.

9. 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.

10. 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.

11. 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.

12. **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.

13. **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.

14. **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.

15. **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.

16. **IT IS FURTHER ORDERED** that The South Carolina Department of Motor Vehicles shall hereinafter prepare and issue a new Certificate of Title for the 1986 American Sunshine , Serial Number ALSB614X60FKSN10259 to the successful purchaser at the foreclosure sale.

17. **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.

18. 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.

19. 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 Lynley D. Murph to Mortgage Electronic Registration Systems Inc., as nominee for Your-Best-Rate Financial, L.L.C. dated May 9, 2005 and recorded in the Office of the Register of Deeds for Spartanburg County on May 20, 2005 in Book 3444 at Page 457.

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

All that certain piece, parcel or tract of land lying and being about 3 miles north of Cherokee Springs, in the County of Spartanburg, State of South Carolina, fronting on S.C. Highway 42-1858 (also known as Overcreek Road), known and designated as Lot D-1, containing 1.06 acres, more or less, as shown on survey for Cheryl A. Bryant by Gooch & Associates, PA, dated August 28, 1998 and recorded in the office of the R.M.C. for Spartanburg County on April 23, 1999 in Plat Book 144 at Page 544. Reference to said survey is made for a more detailed description.

Subject to easements, restrictions, covenants and conditions records in the office of the Register of Deeds/Clerk of Court for Spartanburg County.

TMS Number: 2-38-00-103.07

PROPERTY ADDRESS: 590 Overcreek Rd., Chesnee, SC

ALSO: 1986 American Sunshine Mobile Home, Serial Number ALSB614X60FKSN10259

This being the same property conveyed to Lynley D. Murph by deed of Cheryl Bryant, f/k/a Cheryl A. Phillips, dated April 16, 1999 and recorded in the Office of the Register of Deeds for Spartanburg County on April 23, 1999 in Deed Book 69-U at Page 176.

Spartanburg, South Carolina

\_\_\_\_\_, 2009

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Gordon G. Cooper  
Master in Equity for Spartanburg County

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