

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT

DEEP KEEL, LLC,)
)
Plaintiff,)

CIVIL ACTION NUMBER: 2011-CP-07-1933

v.)

ATLANTIC PRIVATE EQUITY)
GROUP, LLC, TERRY L.)
ROHLFING, JERRY T.)
CALDWELL, AND BLUFFTON)
VILLAGE TOWN CENTER)
PROPERTY OWNERS')
ASSOCIATION, INC.,)
)
Defendants.)

JERRI ANN ROSEHEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT
13 SEP -5 PM 3:24

AMENDED MASTER'S REPORT AND JUDGMENT OF FORECLOSURE AND SALE
(Deficiency Demanded)

Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure (hereinafter "SCRCP"), the above-entitled matter was referred to the undersigned Master in Equity to make appropriate findings of fact and conclusions of law, with authority to enter a final Judgment in the case. Any appeal from the decision of the Master in Equity shall be directly to the South Carolina Supreme Court.

Pursuant to the said reference, a hearing was held, attended by Scott Bynum, sole member of Plaintiff Deep Keel, LLC; Charles S. Altman, attorney for Plaintiff; and Keating L. Simons III, attorney for Defendants Atlantic Private Equity Group, LLC, Terry L. Rohlfing, and Jerry T. Caldwell. As allowed under SC Code §14-11-110 and since there were no objections, testimony was submitted, which is reported herewith, and from the testimony and evidence, I find and conclude as follows:

FINDINGS OF FACT:

1. The Lis Pendens was filed in the Clerk of Court's Office for Beaufort County on April 25, 2011.
2. The Civil Action Coversheet, Summons and Notice, and Complaint were filed in the Clerk of Court's Office for Beaufort County on April 25, 2011.
3. Service of the Civil Action Coversheet, Summons and Notice, and Complaint was affected upon Defendant Bluffton Village Town Center Property Owners' Association, Inc. by and through its managing agent, Courtney P. Hagins, via personal service on May 18, 2011 as

shown by the Affidavit of Service filed in the Clerk of Court's Office for Beaufort County on May 25, 2011.

4. Service of the Civil Action Coversheet, Summons and Notice, and Complaint was affected upon Defendant Atlantic Private Equity Group, LLC, by and through its attorney, Cary S. Griffin, via personal service on May 18, 2011 as shown by the Affidavit of Service filed in the Clerk of Court's Office for Beaufort County on May 25, 2011.

5. Service of the Civil Action Coversheet, Summons and Notice, and Complaint was affected upon Defendant Terry L. Rohlfing via personal service on May 18, 2011 as shown by the Affidavit of Service filed in the Clerk of Court's Office for Beaufort County on May 25, 2011.

6. Service of the Civil Action Coversheet, Summons and Notice, and Complaint was affected upon Defendant Jerry T. Caldwell via personal service on May 25, 2011 as shown by the Affidavit of Service filed in the Clerk of Court's Office for Beaufort County on June 10, 2011.

7. The filing of the Answer of Defendants Atlantic Private Equity Group, LLC, Terry L. Rohlfing, and Jerry T. Caldwell and related Certificate of Service in the Clerk of Court's Office for Beaufort County on June 17, 2011.

8. The filing of the Amended Affidavit of Service for Defendant Atlantic Private Equity Group, LLC, in the Clerk of Court's Office for Beaufort County on June 28, 2011. The amended pleading was filed to correct a scrivener's error.

9. The filing of the Motion Coversheet, Affidavit of Default as to Defendant Bluffton Village Town Center Property Owners' Association, Inc., Affidavit of Non-Military Service as to Defendant Bluffton Village Town Center Property Owners' Association, Inc., Motion for Order of Default as to Defendant Bluffton Village Town Center Property Owners' Association, Inc., and for Reference, and the Order of Default as to Defendant Bluffton Village Town Center Property Owners' Association, Inc., and for Reference in the Clerk of Court's Office for Beaufort County on September 16, 2011.

10. The filing of the Motion Coversheet, Motion for Summary Judgment, to Strike Jury Demand, and for Reference, and related Certificate of Service in the Clerk of Court's Office for Beaufort County on April 18, 2012.

11. The filing of the Motion Coversheet, Motion for Reference, and Consent Order for Reference in the Clerk of Court's Office for Beaufort County on April 17, 2013. The reference was for the sole purpose of determining the foreclosure issues. The issues in the case related to the claims against the Defendants Rohlfing and Caldwell are to be decided by the Circuit Court after the completion of the foreclosure action.

12. The filing of the Motion Coversheet, Notice of Motion and Motion for the Substitution of Party Under Rule 25(c), Order Substituting Plaintiff, and related Certificate of Service in the Clerk of Court's Office for Beaufort County on April 17, 2013. The Order substituted party Deep Keel, LLC as party plaintiff in the place of CresCom Bank, successor by merger to Community FirstBank.

13. The filing of the Notice of Foreclosure Hearing and related Certificate of Service in the Clerk of Court's Office for Beaufort County on June 21, 2013.

14. The filing of the Certification of Compliance with Administrative Order 2011-05-02-01 in the Clerk of Court's Office for Beaufort County on July 10, 2013.

15. On or about March 27, 2008, for value received, Defendant Atlantic Private Equity Group, LLC ("APEG"), executed and delivered to Plaintiff Community FirstBank, now known as CresCom Bank ("Bank"), a certain written promissory note (the "Note") to establish a revolving line of credit, in the sum of \$2,000,000.00, together with the interest thereon at a variable rate, with the initial rate being 6.50% and the principal due on March 25, 2009. The Note provided that in the event of default under any of the loan documents, interest would begin accruing on the principal balance at the rate stated above plus 3.00% per annum until paid in full.

16. On the same date, to better secure payment of the said Note and debt, including all extensions, modifications or substitutions, in accordance with the terms and conditions thereof, Defendant APEG, executed and delivered to Bank, its successors and assigns, a mortgage (the "Mortgage"), granting a security interest in real properties in Beaufort County, which are the same as those described in the Complaint. The Mortgage was recorded on March 28, 2008 in the Register of Deeds Office for Beaufort County, South Carolina in Mortgage Book 2701 at Page 632.

17. The above-referenced Mortgage constitutes a first mortgage on the described property.

18. On or about March 27, 2008, Defendants Terry L. Rohlfig ("Rohlfig") and Jerry T. Caldwell ("Caldwell") executed and delivered to Bank personal Guaranties to individually guaranty the Note and debt of Defendant APEG. The said unsecured Guaranties make Defendants Rohlfig and Caldwell liable for a limited principal amount of \$350,000.00.

19. On or about March 27, 2008, Defendant APEG executed and delivered to Bank an Assignment of Leases, Rents and Profits ("Assignment of Leases"). The Assignment of Leases was recorded on March 28, 2008 in the Register of Deeds Office for Beaufort County, South Carolina in Book 2701 at Page 641.

20. On or about March 27, 2008, Defendant APEG executed and delivered to Bank a Commercial Security Agreement for the Assignment of Leases for the two subject parcels of property.

21. On or about April 23, 2009, for value received, APEG executed and delivered to Bank a Loan Modification Agreement ("Modification 1"), which modification of the Note provided the initial interest rate would decrease to 5.50%, the variable rate to remain the same at 0.50% over Bank's prime rate, and the default interest rate to increase to 5.00%, plus the aforementioned rate, per annum. The maturity date changed to April 16, 2010.

22. On or about May 24, 2010, for value received, APEG executed and delivered to Bank a Loan Modification Agreement ("Modification 2"), which modification of the Note provided the initial interest rate would increase to 6.00%, the variable rate to remain the same at 0.50% over Bank's prime rate, and the default interest rate to remain 5.00%, plus the aforementioned rate, per annum. The maturity date changed to June 9, 2015.

23. On or about August 30, 2012, a Partial Release of Mortgage and Assignment of Leases, Rents and Profits ("Partial Release") was executed and delivered by APEG to Bank for the property being known as Lot 117, Hampton Lake, Beaufort County, South Carolina. The Partial Release was recorded on September 24, 2012 in the Register of Deeds Office for Beaufort County, South Carolina in Book 3176 at Page 2243. The release resulted from the sale of the property and APEG was credited with the net proceeds from the sale in the amount of \$540,375.61.

24. On or about September 28, 2012, Bank executed and delivered to Plaintiff Deep Keel, LLC ("Deep Keel"), an Assignment of Debt and Lien ("Assignment") of the remaining piece of property secured by the Mortgage, Note, and additional loan documents. The Assignment was recorded on October 9, 2012 in the Register of Deeds Office for Beaufort County, South Carolina in Book 3181 at Page 257.

25. Payment is due on the Note as modified, Mortgage, and Guaranties and has not been made. Bank made demand to APEG, Caldwell and Rohlfing as the then holder of the Note and modifications and payment was not made. As payment was not made when due or pursuant to the demand for payment the new holder of the Note and modifications has elected to accelerate payment of the entire indebtedness and has placed the Note as modified, Mortgage, and Guaranties in the hands of its Attorney of Record for collection.

26. The testimony of Scott Bynum as the sole member of Plaintiff, Deep Keel, LLC, which resulted in the findings of fact set forth in paragraphs 15, 16, 17, 18, 19, 20, 21, 22, and 25 (except which refers to Plaintiff's election to accelerate payment of the entire indebtedness and to place the obligation in the retention of counsel) was admitted over the objection of counsel for Defendants, Atlantic Private Equity, LLC, Terry L. Rohlfing and Jerry Caldwell. Counsel for those Defendants argued that Mr. Bynum's testimony was hearsay. The testimony was admitted into evidence as Mr. Bynum testified he was the sole member of Plaintiff and maintained the records received from CresCom Bank as successor by merger to Community FirstBank at the time the loan was assigned to Plaintiff and the records he maintained thereafter. Mr. Bynum was entitled to testify regarding the information contained in the records he received from the Bank pursuant to SC Code §19-5-510 and Rule 803(6) SCRPC and pursuant to the ruling regarding of the South Carolina Court of Appeals in the case of *Twelfth RMA Partners, L.P. v Nat'l Safe Corp.* 335 S.C. 635, 518 S.E. 2d 44 (Ct. App. 1999). In the *Twelfth RMA Partners* case, the Plaintiff was, as here, the assignee of the original creditor. The witness for the Plaintiff was in a similar position to Mr. Bynum and the objection was the same by defendant's attorney. The Court of Appeals held, "Here, [plaintiff's] testimony merely conveyed information from a person "with knowledge" at the time the records were created, a situation expressly allowed under Rule 803(6)." Mr. Bynum's testimony was, therefore, appropriately accepted. It should also, be noted, there was no testimony to contradict any of the testimony of Mr. Bynum.

27. Having considered the nature, extent and difficulty of the services rendered (the field of mortgage foreclosures being a specialized area of practice); the time involved in reviewing the various loan documents, performing the title searches, preparing the pleadings, extensive conversations with opposing counsel regarding settlement, negotiating the resolution of a portion of the debt, and preparing for and attending the foreclosure hearing; the professional standing of Plaintiff's attorney; the fee customarily charged in this jurisdiction for similar services; and the beneficial results obtained for Plaintiff; I find that the sum of \$11,462.00 is a reasonable attorney's fee for the Plaintiff's attorney for services performed as of the July 9, 2013,

under the terms of the Note and Mortgages along with costs incurred in the amount of \$1,219.41. Services anticipated to be performed until final adjudication contemplates completion of this matter within a reasonable time and does not include exceptional, unanticipated circumstances delaying conclusion beyond the normal time. As it is anticipated additional attorneys' fees and costs will be incurred subsequent to July 9, 2013, this Court reserves the right to award additional fees and costs incurred subsequent to July 9, 2013 upon application to the Court by Plaintiff.

28. The amount due and owing on the Note and Mortgage, with interest at the rate provided in the Note, and other costs and expenses of collection, including attorney's fees, secured by the note and mortgage, is as follows:

(a)	Principal due		\$1,532,238.05
(b)	Interest from June 4, 2012 to July 10, 2013		\$ 187,723.30
(c)	Fire, Flood, Hazard Insurance		\$ 7,766.00
(d)	Less Collected Rent from July 2012 through July 2013		\$ (73,775.00)
(e)	Costs		
(i)	Title Search and Abstract	\$476.50	
(ii)	Filing Fee - Commence Suit	150.00	
(iii)	Process Server Fees	356.00	
(iv)	Filing Fee - Motion for Summary Judgment	25.00	
(v)	Filing Fee - Motion for Default and Reference	25.00	
(vi)	Filing Fee - Motion to Substitute Plaintiff	25.00	
(vii)	Filing Fee - Motion for Reference	25.00	
(viii)	Master in Equity Reference Fee	100.00	
(ix)	Postage - Certified Mailings/UPS Deliveries	36.91	
	TOTAL COSTS		\$ 1,219.41
	TOTAL		<u>\$ 1,655,026.52</u>

Per Diem Interest is \$468.1395

Interest for the period from the date shown in (b) above through the date of this judgment, at the per diem rate of \$468.1395 is 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 pursuant to the terms of the Note and Mortgage.

29. Plaintiff is seeking foreclosure of its mortgage and has, in the Complaint expressly demanded the right to a deficiency Judgment against Defendants APEG, Caldwell, and Rohlfing. Since the deficiency is demanded, the bidding will remain open for a period of thirty (30) days, pursuant to Rule 71(b), SCRCF. *Plaintiff reserves its right to withdraw its demand for deficiency judgment at any time prior to the foreclosure sale herein.*

CONCLUSIONS OF LAW:

I, therefore, conclude as follows:

Defendants APEG is indebted to the Plaintiff on the Note as modified and Mortgage. Plaintiff is entitled to relief and the property securing the obligation should be sold based on the following.

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

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. That there is due to Plaintiff on its Note as modified and Mortgage the sum of \$1,655,026.52, representing the Total Debt due to the Plaintiff as set out in Paragraph 27 *supra*, together with interest thereon at the rate provided plus attorneys' fees as set forth in Paragraph 26, *supra*.

2. That the amount due in the preceding paragraph as set forth in Paragraph 27 *supra* and later accrued interest and costs and attorneys' fees as set out in Paragraph 26, *supra* shall constitute the total judgment debt due to Plaintiff.

3. Defendant APEG is liable for the aforesaid Mortgage debt and shall, prior to the date and time of the sale of the subject property, pay to Plaintiff, or Plaintiff's attorney, the amount of Plaintiff's debt, together with the costs and disbursements of this action. The determination of the amount, if any, owed by the Defendants, Rohlfing and Caldwell, is to be determined by the as provided in the Order of Reference.

4. That on default of payment prior to the date and time of the sale, the mortgaged premises located in Beaufort County, hereinafter described, shall be sold by the undersigned Master in Equity at public auction, at the Beaufort County Courthouse, in the County of Beaufort, South Carolina, on some convenient sales day hereafter, on the following terms:

A. FOR CASH: The undersigned Master in Equity shall require a deposit of 5% on the amount of the bid (in cash or equivalent) the same to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance within thirty (30) days the same to be forfeited and applied to the costs and then to Plaintiff's debt.

B. The said sales shall be subject to taxes and assessments, existing easements and easements and restrictions of record.

C. Purchaser is to pay for the deed and the cost of recording the deed.

5. That if Plaintiff is the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of Plaintiff in full, Plaintiff may pay to the undersigned Master in Equity only the amount of the costs and expenses, crediting the balance of the bid to Plaintiff's indebtedness.

6. That a deficiency Judgment being demanded against Defendants, APEG, Caldwell, and Rohlfing, and the sale will remain open for thirty (30) days pursuant to Section 15-39-720. S.C. Code of Laws, South Carolina, 1976, as amended. *Plaintiff reserves its right to waive the deficiency at any time prior to the sale.*

7. That the claims of the other parties to this action are junior and subordinate to the mortgage lien of the Plaintiff.

8. That the undersigned Master in Equity will, by advertisement according to law, give notice of the time and place of sale and the terms thereof and that he will execute to the purchaser, or purchasers, a deed to the premises sold. Plaintiff, or any other party to this action, or any other person may become a purchaser at such sale. Upon such sale being made, should the successful bidder, or his assignee, fail to comply with the terms thereof within thirty (30) days after the date of sale, then the undersigned Master in Equity may re-advertise the 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.

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

FIRST: To payment of any 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 the amount to Plaintiff; or Plaintiff's Attorney, of the amount of the Plaintiff's debt and interest or so much thereof as the purchase money will pay on the same; and

NEXT: Any surplus will be held pending further Order of this Court pursuant to Rule 71(c), SCRPC.

10. That it is further ORDERED, ADJUDGED AND DECREED that Defendants APEG, Caldwell, and Rohlfing and all persons whomsoever claiming under them, 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.

11. That it is further ORDERED, ADJUDGED AND DECREED that in accordance with S.C. Code Ann. § 30-9-31, the deed of conveyance made pursuant to this judgment and said sale shall contain the names of the title holder of the mortgaged property at the time of the filing of the Lis Pendens, and the Grantee; and that the Register of Deeds Office for Beaufort County, South Carolina, is hereby authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

12. That the undersigned Master in Equity shall retain jurisdiction to do all necessary acts incident to this foreclosure, including, but not limited to, the issuance of a Writ of Assistance, disposing of any surplus funds pursuant to Rule 71(c), SCRPC.

13. That after the Order Confirming Sale and Disbursements has been issued and filed, the undersigned Master in Equity shall direct the Register of Deeds Office for Beaufort County to release of record the mortgage lien being foreclosed, which mortgage lien is described in Paragraph 16 of the Findings of Fact herein above.

14. That the following is a description of the premises herein ordered to be sold:

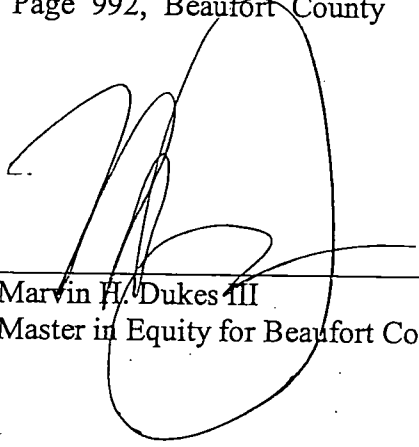
ALL that certain piece, and parcel of real property, containing 0.1 I acres, more or less, said property being a portion of Phase ID of Bluffton Village

Town Center, in the Town of Bluffton, County of Beaufort, South Carolina, being more specifically shown and designated as Lot 20 on a plat entitled "A Boundary Survey of Lot 20, Palmetto Way, Bluffton Village, Phase ID," said plat being prepared by Ward Edwards, Inc., certified by Donald R. Cook, Jr., S.C.P.L.S. No. 19010, dated September 2, 2004, and recorded September 16, 2004, in the Beaufort County Records in Plat Book 101 at Page 107.

This being the same property conveyed to Atlantic Private Equity Group, LLC by Deed recorded in Book 2031 at Page 992, Beaufort County Records.

TMS #: R600 039 000 0911 0000

AND IT IS SO ORDERED.



Marvin H. Dukes III
Master in Equity for Beaufort County

Beaufort, South Carolina
Dated: August 27, 2013