

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

HSBC Bank USA, National Association, as Trustee
for MLCC 2007-2,

Plaintiff,

vs.

S. Russell Fielden; Deborah M. Fielden;
CoastalStates Bank,

Defendants,

CoastalStates Bank,

Cross-Claim Plaintiff,

vs.

S. Russell Fielden and Deborah M. Fielden,

Cross-Claim Defendants.

(511227.00448 CSG)

Charles S. Gwynne Jr., Esquire
Attorney for the Plaintiff

William H. Sloan, Esquire
James P. Scheider, Jr., Esquire
Attorney for Defendants S. Russell Fielden and Deborah M. Fielden

Mark S. Simpson, Esquire
Samuel L. Kirkland, Esquire
Attorneys for Defendant CoastalStates Bank

A hearing was held February 18, 2013 at 9:30 a.m. Evidence was presented,
which is reported herewith, and from the evidence, I find and conclude as follows:

FINDINGS OF FACT:

1. The Lis Pendens was filed on June 14, 2010.
2. The Summons and Complaint were filed on June 14, 2010.
3. Service was made upon all Defendant(s) as shown by the proof(s) of service filed herein.

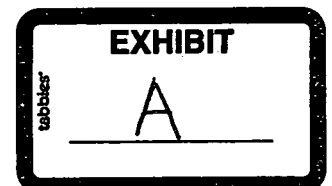
IN THE COURT OF COMMON PLEAS

DOCKET NO.: 10-CP-07-2927

JUDGMENT OF FORECLOSURE AND
SALE

Deficiency Judgment Demanded against
S. Russell Fielden and Deborah M. Fielden

MAR 18 PM 2:31
ROSENBAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT



4. The Defendant(s) S. Russell Fielden and Deborah M. Fielden are not in the Military Service of the United States of America, as contemplated under The Servicemembers Civil Relief Act, 50 U.S.C. § 501 et. seq. as shown by affidavit, certificate or order filed herein.

5. Pursuant to the South Carolina Supreme Court Administrative Order 2009-05-20-01 dated May 22, 2009, the Plaintiff set forth its belief in its Complaint or by Affidavit, which is already of record in this case, that the mortgage loan which is the subject of this foreclosure action is not eligible for modification pursuant to the terms of the Home Affordable Modification Program (HMP). Pursuant to the South Carolina Supreme Court Administrative Order dated May 22, 2009, Plaintiff's attorney has not received a counter affidavit from any Defendant(s).

6. Attorney for the Plaintiff has fully complied with the South Carolina Supreme Court Administrative Order 2011-05-02-01 dated May 2, 2011.

7. On or about November 24, 2010 Defendants S. Russell Fielden and Deborah M. Fielden filed an Answer through their attorney, William H. Sloan, Esquire.

8. On or about July 29, 2012 Defendant Coastalstates Bank filed an Answer and Cross-Claim through their attorney, Mark S. Simpson, Esquire.

9. All Pro Se Defendant(s) and all attorneys of record were notified of the time, date, and place of the hearing by Notice of Hearing and certificate of mailing of record herein.

10. At the hearing on February 18, 2013, Defendant S. Russell Fielden and Deborah M. Fielden argued that Plaintiff is not the real party in interest entitled to enforce the note and mortgage due to its failure to follow the transfer requirements of the Pooling and Servicing Agreement under Article 9 of the New York Uniform Commercial Code. Specifically, including the endorsement requirements on the note and its failure to demonstrate the complete chain of transfers. The court finds that the Plaintiff is in possession of the original Note endorsed in blank and therefore has standing to bring this action.

11. S. Russell Fielden and Deborah M. Fielden for value received, made, executed and delivered a Fixed/Adjustable Rate Rider Note ("Note") dated May 17, 2006, promising to pay to Plaintiff or its predecessor the sum of \$468,000.00 with interest at 7.250% per annum. Other terms and conditions are stated in the Note, of record herein.

12. To better secure the payment of the Note described above, S. Russell Fielden and Deborah M. Fielden made, executed, and delivered to Mortgage Electronic Registration Systems, Inc. acting solely as nominee for Coastalstates Bank (MIN #1004553-0080600849-8) a certain real estate Mortgage in writing, dated May 17, 2006, covering real property in Beaufort County, which is the same as that described in the Complaint. This Mortgage was filed on May 19, 2006, and is of record in the Office of RMC/ROD for Beaufort County in Book 02376 at Page 1741. This mortgage was subsequently assigned to the Plaintiff by Assignment of Mortgage dated August 13, 2010, and recorded on August 23, 2010, in the Office of RMC/ROD for Beaufort County in Book 2984 at Page 857.

13. This Mortgage constitutes a first priority lien on the subject property, subject only to ad valorem taxes or other liens given priority by statute.

14. Payment due on the Note was not made as provided for therein, and Plaintiff, as the holder or nominee for the holder thereof, has elected to require immediate payment of the entire amount due thereon and placed the Note and Mortgage in the hands of the attorney herein for remedy by foreclosure.

15. The sum of \$21,361.68 is a reasonable fee and cost to allow Plaintiff's counsel for services performed and anticipated to be performed until final adjudication of this action, under the terms of the Note and Mortgage. This fee is likewise reasonable based on the time necessarily devoted to representation of Plaintiff during the several month course of these proceedings. The services of counsel performed for Plaintiff, which include the number and types of pleadings and documents prepared, the incumbent liabilities, and the difficulties involved in this particular case also support the fee awarded. The fee is also reasonable given the professional standing of Plaintiff's counsel and their experience in handling foreclosure matters. The fee awarded herein is also reasonable in light of the fees customarily awarded by this court for similar services in this locality. Moreover, the efforts of Plaintiff's counsel have had the beneficial result of a prompt foreclosure of the Mortgage. Services anticipated to be performed until final adjudication contemplate completion of this matter within a reasonable time and does not include exceptional circumstances delaying conclusion beyond the normal time.

16. According to Plaintiff's accounting, after all payments received by Plaintiff have been credited to the subject loan, the amount due and owing on the Note, with interest at the rate provided in the Note, advances made by Plaintiff, and other costs and

expenses of the action, including a reasonable attorney fee, all secured by the Note and Mortgage, is as follows:

Principal	\$468,000.00
Interest from 12/01/09 to 2/18/13 at 7.250%	\$109,025.30
Late Charges 09/16/09 \$173.53 10/16/09 \$173.53 11/16/09 \$173.53 01/19/10 \$173.53 02/16/10 \$173.53 03/16/10 \$173.53 04/16/10 \$173.53 05/17/10 \$173.53	\$1,041.18
Credit 11/17/09 \$(347.06)	
Escrow Advances Tax Advances 11/26/11 \$4,060.49 11/30/11 \$3,972.61 12/01/10 \$3,925.08 Total: \$11,958.18 Flood Insurance 03/30/12 \$365.00 04/01/11 \$365.00 Total: \$730.00 Hazard Insurance 3/29/12 \$5,736.00 04/01/11 \$5,144.00 05/03/10 \$2,682.58 Total: \$13,562.58	\$26,250.76
Property Inspections 03/24/10 \$13.25 07/06/10 \$11.25 07/27/10 \$11.25 08/24/10 \$11.25	\$374.75

09/24/10	\$11.25	
10/26/10	\$11.25	
11/30/10	\$11.25	
12/28/10	\$11.25	
01/25/11	\$11.25	
02/24/11	\$11.25	
03/30/11	\$12.75	
04/29/11	\$11.25	
06/08/11	\$11.25	
06/28/11	\$11.25	
08/05/11	\$11.25	
08/31/11	\$11.25	
09/27/11	\$11.25	
10/28/11	\$11.25	
12/05/11	\$11.25	
12/29/11	\$11.25	
01/24/12	\$11.25	
02/27/12	\$11.25	
03/28/12	\$11.25	
04/23/12	\$11.25	
06/04/12	\$11.25	
06/25/12	\$11.25	
07/30/12	\$11.25	
08/27/12	\$11.25	
09/25/12	\$11.25	
10/23/12	\$11.25	
11/28/12	\$11.25	
12/27/12	\$11.25	
02/01/13	\$11.25	
Attorney's Fees incurred (paid, billed but unpaid or unbilled)		\$17,772.50
Anticipated attorney fees awarded herein		\$2,250.00
Expenses (Case filing fee; Service of process; Reference fee; Motions Fee; Recording Costs, Transcript of Hearing, Auto Mileage Reimbursement)		\$939.18
Title Search		\$400.00
TOTAL PRINCIPAL, INTEREST AND EXPENSES:		\$626,053.67

Interest shall accrue to the above stated "Total Debt" after the date of judgment at the rate of 7.250% per annum (pursuant to the terms of the Note and first Mortgage). Accrued interest shall be added to the "Total Debt" and shall comprise the amount of the Plaintiff's debt secured by the

first Mortgage through the date to which such interest is computed.

17. Plaintiff is seeking the usual foreclosure of the first mortgage and has expressly demanded the right to a personal or deficiency judgment pursuant to S.C. Code Ann. §29-3-660 against S. Russell Fielden and Deborah M. Fielden. The Plaintiff may waive any of its rights, including its right to a personal or deficiency judgment, at any time prior to the foreclosure sale.

18. The following Defendant(s) may claim a subordinate lien upon or subordinate legal interest in the subject property and in the event there is a surplus from the sale of the subject property, these Defendant(s) may present through any such lien or legal interest a claim to the surplus at a hearing subsequent to the sale, in accordance with Rule 71(c) South Carolina Rules of Civil Procedure. The said Defendant(s) and such liens or legal interests are as follows:

A. CoastalStates Bank, by virtue of a mortgage given by S. Russell Fielden and Deborah M. Fielden in the amount of \$380,000.00, dated November 19, 2007, and recorded November 30, 2007 in Book 2656 at Page 1126.

IT IS THEREFORE ORDERED:

19. Plaintiff has fully complied with The South Carolina Supreme Court Administrative Orders 2009-05-22-01 dated May 22, 2009, and 2011-05-02-01 dated May 2, 2011, and the foreclosure action may proceed.

20. The Plaintiff has standing to bring this action.

21. Third-Party Plaintiff CoastalStates Bank's cross-claim against S. Russell Fielden and Deborah M. Fielden is denied.

22. There is due on the Note and first Mortgage set forth in the Complaint the sum of \$626,053.67, as set out in the Findings of Fact *supra*, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof.

23. Plaintiff shall have judgment demanded against S. Russell Fielden and Deborah M. Fielden. The Plaintiff may waive any of its rights, including its right to a personal or deficiency judgment, at any time prior to the foreclosure sale.

24. The amount due in the preceding paragraph (the "Final Total Debt" as

set out in the Findings of Fact *supra*) shall accrue interest at the rate of the respective note rate(s) per annum and together with such interest shall constitute the total judgment debt due Plaintiff.

25. The amount of the judgment shall be subject to increase to permit Plaintiff to recover additional costs, commissions, and expenses not included in the minimum deposit previously made in compliance with S.C. Code Ann. §14-11-310 (1976). It may also increase to include supplemental compensation for attorneys' services not contemplated by the initial fee award. Jurisdiction over the fee award and total debt is reserved to facilitate the assessment and payment of any such costs or supplemental compensation. Such additional costs, commissions and expenses may be established by affidavit and shall be adjudicated by the court without further hearing.

26. The Defendant(s) liable for the aforesaid judgment debt of the Note and Mortgage including interest at the rate of 7.250% per annum shall pay on or before the date of sale of the property hereinafter described, to Plaintiff or Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, including with the costs and disbursements of this action.

27. On default of payment at or before the time of the sale of the property, the mortgaged property described hereinafter shall be sold by the below signed Master in Equity or Special Referee or other court-appointed or designated agent or auctioneer at public auction at the Beaufort County Courthouse, in the City of Beaufort, and State of South Carolina, on a sales day determined by the below signed Master in Equity or Special Referee, on the following terms:

a. For cash or its equivalent: An immediate deposit of 5% is required on the amount of the bid. The deposit will be applied to the purchase price when total compliance is made. In the event compliance is not made, the deposit shall be forfeited without further hearing and applied first to costs and expense of the action and then to plaintiff's debt. Should the successful bidder at the regularly conducted sale fail or refuse either to make the required deposit at time of bid or to comply with the other terms of the bid within 30 days, then the property may be re-sold on the same terms and conditions on the same or some subsequent sales day and at the risk of the defaulting bidder.

b. Interest on the balance of the bid after the deposit is applied shall be paid through the day of compliance at the note rate of 7.250%.

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

and restrictions, and any other senior encumbrances.

d. Purchaser shall pay for any statutory commission on sale from the proceeds of the final bid amount.

e. Purchaser to pay for deed preparation, costs of recording the deed and the satisfaction of mortgage, and transfer taxes on the deed.

f. Purchaser shall be entitled to possession of the premises only after Purchaser fully complies with the bid amount and a deed is issued by the Master in Equity or Special Referee.

28. Personal or deficiency judgment having been demanded, the sale will remain open for thirty (30) days pursuant to S.C. Code Ann. Sec. 15-39-720 (1976).

29. Plaintiff may waive any of its rights, including its right to a deficiency judgment in accordance with Rule 71, of the South Carolina Rules of Civil Procedure, prior to sale.

30. The Master in Equity or Special Referee will give notice of the time and place of the sale by advertisement according to law and the terms thereof by advertisement according to law and will execute to the Purchaser a deed to the property sold. Plaintiff or any other party to this action may become a purchaser at such sale. If, upon such sale being made, the Purchaser should fail to comply with the terms thereof within 30 days after date of sale, then the Master in Equity or Special Referee 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.

31. In the event an agent of Plaintiff does not appear at the time of sale, the within property shall be withdrawn from sale and sold at the next available sales date upon the same terms and conditions as set forth in this Judgment of Foreclosure and Sale or such terms as may be set forth in a supplemental order.

32. If Plaintiff is the successful bidder at the said sale for a sum not exceeding the amount of costs and expenses of the sale, plus the indebtedness of Plaintiff in full, Plaintiff may pay to the Master in Equity or Special Referee only the amount of the costs and expenses crediting the balance of the bid on Plaintiff's indebtedness.

33. The Master in Equity or Special Referee will apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of the costs and expenses of this sale and to any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court;

NEXT: To the payment to Plaintiff or Plaintiff's attorney of the amount of Plaintiff's debt and interest (including a reasonable attorney fee) or so much thereof as the purchase money will pay on the same; After crediting the proceeds of the sale, net of any commission on sale, an Order for Deficiency Judgment shall be entered without further notice or hearing.

NEXT: Any surplus should be held pending further Order of this court.

34. In the event the successful bidder is someone other than the Defendant(s) in possession of the subject property, the Sheriff of Beaufort County is ordered and directed to eject and remove from the property the occupant(s) 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 property without delay, and to keep said successful bidder or his assigns in such peaceable possession. All valid tenant rights shall be protected pursuant to the Protecting Tenants at Foreclosure Act of 2009.

35. In the event the successful bidder is other than the Defendant in possession herein, the Sheriff, upon receipt of a Writ of Assistance or other order of ejectment, is authorized and directed to eject and remove from the premises the occupant(s) 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.

36. The Defendant(s) named herein, and all persons whosoever claiming under Defendant(s), are forever barred and foreclosed of all right, title, interest, equity of redemption or lien in the said mortgaged property or sold, or any part thereof.

37. In accordance with Rule 77(d), of the South Carolina Rules of Civil Procedure, the Clerk of Court shall serve a notice of entry of this Judgment of Foreclosure upon all parties not in default for failure to appear in this action.

38. The deed of conveyance made pursuant to the foreclosure sale shall contain the names of only the first-named Plaintiff and the first-named Defendant(s), and the Defendant(s) who was/were the titleholder(s) 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. The Register of

Deeds/Clerk of Court is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

39. The undersigned will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance.

40. The following is a description of the property herein ordered to be sold:

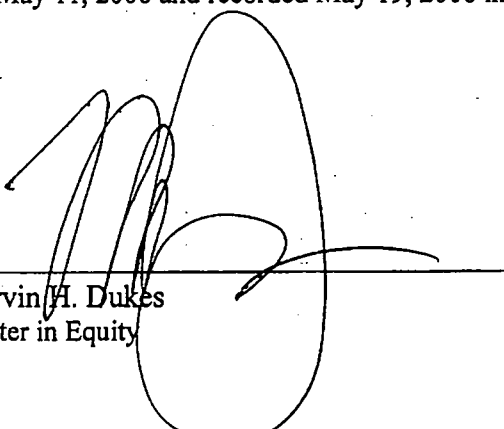
ALL that certain piece, parcel or lot of land with improvements located in the City of Beaufort, Beaufort County, South Carolina, being shown and depicted as Lot 112. Plowmans Point, on that plat entitled, "Subdivision Plat Main Island Phase III Islands Of Beaufort", prepared for Beaufort Properties, L.L.C., prepared by Gasque & Associates, Inc., by David E. Gasque. R.L.S dated January 14, 2002 and recorded in Plat Book 87 at Page 128 with the Register of Deeds Office for Beaufort County.

Said property is subject to all Rights, Easements., Restrictions, Affirmative Obligations, Conditions, described in the Declaration of Master Covenants, Conditions And Restrictions for the Islands Of Beaufort Subdivision recorded in Book 1060 at Page 954, and Supplemental Declaration of Covenants And Restrictions Running with Phase III Of The Islands of Beaufort Subdivision recorded in Book 1255 at Page 859 with the Register of Deeds Office for Beaufort County.

This being the identical property conveyed to S. Russell Fielden and Deborah M. Fielden by deed of Michael L. Mapes and Jackie G. Clarkson dated May 11, 2006 and recorded May 19, 2006 in Deed Book 2376 at Page 1738.

Property Address: 241 De La Gaye Point
Beaufort, SC 29902

TMS# R120-032-000-0372-0000



Marvin H. Dukes
Master in Equity

3/21, 2013
Moncks Corner, South Carolina

