

10/11

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

CitiMortgage, Inc.,

PLAINTIFF,

vs.

Peter N. Spirakis, TD Bank, N.A., Stef Properties, LLC,
and Arcadian Shores Single-Family Residential Home
Owners Association, Inc.,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

SPECIAL REFEREE'S ORDER AND
JUDGMENT OF FORECLOSURE AND
SALE

(NON-JURY MORTGAGE
FORECLOSURE)

C/A NO: 2013-CP-26-01553

DEFICIENCY REQUEST

RECEIVED

OCT 31 2013

SC Court of Appeals

HORRY COUNTY
13 OCT -2 AM 11:11
HELEN HUGGINS-WARD
CLERK OF COURT

F13-00559

TO:

Korn Law Firm, P.A.
Attorney for Plaintiff

Michael J. Barnett, Esq.
Stef Properties, LLC

George N. Spirakis, Esq.
Attorney for Peter N. Spirakis

The loan is no longer subject to the Supreme Court of South Carolina's Administrative Order 2011-05-02-01 because the Mortgagor(s) have been served with the required notice of rights, and more than 30 days have elapsed since service upon the Mortgagor(s), and, the Mortgagor(s) have failed, refused, or voluntarily elected not to participate in any foreclosure intervention process.

The Notice of Denial of Foreclosure Intervention was mailed to the borrowers on July 24, 2013, and the borrowers failed to file a response to the notice.

Pursuant to Rule 53 SCRCF, the above-entitled matter was referred to the undersigned to make appropriate findings of fact 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, the testimony was taken, which is reported herewith, and from the testimony and evidence, I find conclude and order as follows:

FINDINGS OF FACT:

1. The Lis Pendens was filed on March 14, 2013.
2. The Summons and Complaint were filed on March 14, 2013.

3. Service was made upon the Defendants named in this Report as is shown by the Proofs of Service filed herein; Defendant Peter N. Spirakis was properly served by publication.

4. That the Defendants Peter N. Spirakis, TD Bank, N.A., and Arcadian Shores Single-Family Residential Home Owners Association, Inc., are in default as shown by Affidavit on file herein. The Defendants TD Bank, N.A. and Arcadian Shores Single-Family Residential Home Owners Association, Inc., are in default and did not appear at the hearing therefore, any issue as to standing is waived. The Defendant Peter N. Spirakis appeared at the hearing with his attorney, George N. Spirakis.

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

6. According to the Affidavit filed herein, no Defendant in default is in the Military Service of the United States of America, as contemplated under the Soldiers' and Sailors' Civil Relief Act of 1940, and any amendments thereto.

7. No Defendant raised any issues related to Plaintiff's standing to prosecute this action.

8. For value received, Peter N. Spirakis made, executed and delivered a Note dated July 18, 2003, promising thereby to pay to the order of Carolina First Bank the sum of Two Hundred Thirty-Seven Thousand Five Hundred And 00/100 Dollars (\$237,500.00), with interest at 5.375 percent 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 Peter N. Spirakis made, executed and delivered to Carolina First Bank a Mortgage in writing, dated July 18, 2003, covering real property in Horry County, which is the same as that described in the Complaint. The mortgage was filed on July 21, 2003, and is of record in the Office of the Register of Deeds for Horry County in Mortgage Book 3358 at page 1440.

10. Thereafter, by virtue of an assignment dated August 22, 2003, recorded October 30, 2003, in Mortgage Book 3477 at page 1492, Carolina First Bank assigned said mortgage unto Principal Residential Mortgage, Inc.

11. Thereafter, by virtue of a corporate merger, Principal Residential Mortgage, Inc. merged with CitiMortgage, Inc. CitiMortgage, Inc. is present lien holder and Plaintiff herein.

12. The above referenced instrument constitutes a purchase money mortgage with the proceeds of the loan being used to purchase the property above described.

13. Payment due on the Note has not been made as provided for therein, 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.

14. I find that since the inception of this action, plaintiff's attorney has assumed responsibility for the institution of this action and has searched and updated the title on the subject property from the date the

current owner received the property or the date the mortgage was executed to the date of the filing of the Lis Pendens. He has been responsible for the preparation of the following pleadings:

1. Lis Pendens
2. Summons and Complaint
3. Affidavit of Default
4. Order of Reference
5. Notice of Hearing
6. Proposed Final Decree
7. Notice of Sale
8. Transcript of Testimony
9. Other documents as applicable pertaining to service and finalization of this action.

Additionally, he has arranged for service of process on the defendant(s), has scheduled and attended the hearing in this matter, has provided reinstatement figures to the primary defendant, if requested, and has had telephone conversations with the defendant(s), if requested. Future duties include forwarding copies of the Decree to the defendant(s), advising the defendant(s) of the date that the property will be sold, arranging and coordinating the amount to be bid by plaintiff, representation of plaintiff at sale and preparation of after sale documentation as required. In light of the potential liabilities inherent in a property matter, the attendant responsibilities and the size of the mortgage debt, I find that the attorney fees requested by the plaintiff in the amount of one thousand three hundred twenty-five and 00/100 (\$1,325.00) are reasonable.

15. 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 the Note and Mortgage, is as follows:

(a)	Principal due as of 11/01/2012	\$177,772.63
(b)	Interest from 10/01/2012 through 9/10/2013 at 5.375%	\$ 8,994.58
(c)	Escrow adjustments (debits or credits)	\$ 4,727.96
	Insurance	\$4,623.00
	Taxes	\$ 104.96
(d)	Late charges	\$ 265.96
(e)	Costs of Collections Prior to Hearing	\$ 1,299.76
(f)	Attorney Fees	\$ 1,325.00
	TOTAL DEBT secured by Note and Mortgage, including interest to date shown	\$194,385.89

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 5.375 percent 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.

16. That the Defendant, TD Bank, N.A., s/b/m to Carolina First Bank, is made a party by virtue of a Mortgage given by Peter N. Spirakis to Carolina First Bank, dated December 11, 2006 and recorded December 18, 2006, in Mortgage Book 4806 at Page 800, in the amount of \$150,000.00.

17. That the Defendant, Stef Properties, LLC, is made a party by virtue of a Confession of Judgment given by Peter N. Spirakis, a/k/a Panteleimon Spirakis, et al, dated August 3, 2012 and recorded August 23, 2012, in the original amount of \$33,750.00 and identified as Judgment Case # 2012-CP-26-6571. Based upon the evidence presented at the hearing by this Defendant, I find and take judicial notice that Stef Properties, LLC holds a valid judgment lien against the subject property in the current amount of \$36,330.76 including interest to the date of the hearing, plus interest of \$7.44 per day until paid. I further find that this is a second lien on the property, being junior in priority only to the Plaintiff's mortgage lien and any unpaid taxes.

18. That the Defendant, Arcadian Shores Single-Family Residential Home Owners Association, Inc., is made a party by virtue of any homeowners liens or assessments recorded or unrecorded that are due or that may become due in the future.

19. That the Plaintiff does not waive but specifically demands judgment against the Defendant(s), Peter N. Spirakis, for the full amount found to be due to Plaintiff on the note and mortgage held by plaintiff, with the right to enter personal judgment against the Defendant(s) for any deficiency in this action remaining after sale of the mortgaged premises.

20. As a personal or deficiency judgment is demanded, the bidding will remain open for a period of thirty (30) days pursuant to S.C. CODE Ann. Section 15-39-720 (1976).

21. That the servicer is participating in the Home Affordable Modification Program (HMP). The HMP modification process specified by the Guidelines or Supplemental Directive has been completed without resulting in a modification because the borrower failed to provide the documentation necessary for the servicer to perform an HMP analysis.

CONCLUSION OF LAW

I, therefore, conclude as follows:

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

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. There is due to the Plaintiff on the obligation and mortgage set forth in the Complaint the sum of One Hundred Ninety-Four Thousand Three Hundred Eighty-Five And 89/100 Dollars (\$194,385.89) 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.
2. The amount due in the preceding paragraph (the "Total Debt" as set forth supra 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 5.375% percent per annum.
3. 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 Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.
4. 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 Master in Equity at public auction at the Horry County Justice Center, 1301 2nd Ave. in Conway, South Carolina, on some convenient sales day hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in the 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 Five percent (5%) on the amount of the bid (in cash or equivalent) at the time of the sale, same to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance within Thirty (30) 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 5.375 percent.
 - C. The sale shall be subject to taxes and assessments, existing easements and easements and restrictions of record.
 - D. The above referenced instrument constitutes a purchase money mortgage with the proceeds of the loan being used to purchase the property above described.
 - E. The Purchaser is to pay for the deed preparation, for Deed Stamps and costs of recording the Deed.
5. If Plaintiff be the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of the 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 on Plaintiff's indebtedness. If Defendant Stef Properties, LLC be the successful bidder at the sale, for a sum not exceeding the total of the amount owed on the Plaintiff's mortgage lien plus the amount owed on the said

Defendant's judgment lien, the said Defendant may pay to the Master in Equity only the amount of the costs and expenses of sale plus the amount owed on the Plaintiff's mortgage lien, crediting the balance of the bid on the said Defendant's judgment lien.

6. Fourth, Plaintiff have judgment against the Defendant, Peter N. Spirakis, for the full amount found to be due Plaintiff on the note and mortgage, with right to enter a personal judgment against the Defendant, Peter N. Spirakis, for any deficiency in this action remaining after sale of the mortgaged premises.

7. As a personal or deficiency judgment is demanded, the bidding will remain open for a period of thirty (30) days pursuant to S.C. CODE Ann. Section 15-39-720 (1976).

8. That the Master in Equity will, by advertisement according to law, give notice of the time, and place of sale, and the terms thereof; and 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 Thirty (30) 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.

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 to the 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: To the payment to the Defendant Stef Properties, LLC or said Defendant's attorney of the amount of the said Defendant's judgment lien of \$36,330.76 plus interest of \$7.44 per day from September 10, 2013 to the date of payment, or so much thereof as the purchase money will pay on the same.

NEXT: Any surplus will be held pending further order of the court.

10. It is further ORDERED, ADJUDGED AND DECREED that in the event the successful bidder to whom the deed of conveyance has been issued subsequent to the sale is other than the Defendants in possession herein and a Writ of Assistance has been presented, the Sheriff of Horry 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 to whom the deed of conveyance has been issued 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. All valid tenant rights shall

have his/her rights protected pursuant to the Protecting Tenants at Foreclosure Act of 2009 have his/her rights protected.

11. And it is further ORDERED, ADJUDGED AND DECREED that each Defendant and all persons whomsoever claiming under him, her or 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.

12. And it is further ORDERED, ADJUDGED AND DECREED that any prior lien that has been paid in full is hereby satisfied and cancelled of record.

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

15. Upon issuance of a Master in Equity 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:

That Mortgage originally given to Carolina First Bank by Peter N. Spirakis, dated 07/18/2003 and recorded 7/21/2003, in Mortgage Book 3358 at page 1440.

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

LEGAL DESCRIPTION AND PROPERTY ADDRESS:

ALL THAT CERTAIN piece, parcel or lot of land, with the improvements thereon, situate, lying and being in the County and State aforesaid and being shown and designated as Lot Fifth-Six (56) on a plat of Arcadian Shores prepared by Robert L. Bellamy, dated November 1964, revised February 1956, and recorded in Plat Book 43 at Page 8, in the office of the Clerk of Court for Horry County, South Carolina reference to which is craved as forming a part of these presents.

THIS BEING the same property conveyed to Peter N. Spirakis by virtue of a Deed from Clifton N. Deese, Bradford C. Lent and Eileen Corinne Brengle, dated July 18, 2003 and recorded July 21, 2003, in Deed Book 2620 at Page 372, in the Office of the Register of Deeds for Horry County, South Carolina.

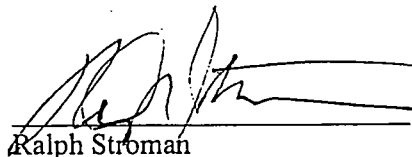
407 Queens Road, Myrtle Beach, South Carolina 29572

TMS 166-03-41-009

17. 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.

18. IT IS FURTHER ORDERED that the servicer is participating in the Home Affordable Modification Program (HMP). The HMP modification process specified by the Guidelines or Supplemental Directive has been completed without resulting in a modification because the borrower failed to provide the documentation necessary for the servicer to perform an HMP analysis.



Ralph Stroman
Special Referee For Horry County

Conway, South Carolina
10/11, 2013.