

STATE OF SOUTH CAROLINA FILED-RECEIVED IN THE COURT OF COMMON PLEAS

COUNTY OF YORK
SunTrust Mortgage, Inc.,

2013 OCT -9 AM 9:26

CASE NO.: 2007-CP-46-4305

Plaintiff(s)

DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

vs.

Mark Ostendorff,

Defendant(s).

**ORDER AND JUDGMENT OF
FORECLOSURE AND SALE
Deficiency Demanded**

Appearances: Brian S. Tatum, Plaintiff's Attorney
Rich Willits, VP at SunTrust Mortgage, Inc.
Mark Ostendorff, Defendant pro se

Pursuant to Rules 53 and 71 of the South Carolina Rules of Civil Procedure (hereinafter "SCRCP"), this matter was referred to me to make appropriate findings of fact and conclusions of law, with authority to enter a final judgment in the cause. Any appeal from this Report of Judgment of Foreclosure and Sale shall be directly to the South Carolina Court of Appeals.

Hearing was held, attended by attorneys of record and testimony was taken, which is reported herewith. From the testimony and evidence I conclude as follows:

FINDINGS OF FACT

1. The Amended *Lis Pendens* was filed on November 30, 2007.
2. The Amended Summons and Complaint was filed on November 30, 2007.
3. Service was made upon the Defendants named in this Report as shown by the Affidavits of Service filed herein.
4. All Defendants were notified of the time, date, and place of hearing in this matter, as evidenced by the Affidavits of Service filed herein.

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SC Court of Appeals

5. For value received, Mark Ostendorff (hereinafter referred to as the "Mortgagor(s)") made, executed and delivered a Note, dated March 29, 2006, promising to pay to the order of SunTrust Mortgage, Inc. the sum of \$400,000.00, with interest at the rate of 6.74% per annum.

6. To better secure repayment of the Note the Mortgagor(s) made, executed, and delivered to SunTrust Mortgage, Inc. a Mortgage dated March 29, 2006, covering real property which is located in York County. The Mortgage was recorded on August 28, 2007 in the Office of the Register of Deeds/Clerk of Court for York County in Book 07985 at Page 00302.

7. The recorded Mortgage constitutes, and is, a First lien on the subject property.

8. The title holders of record of the subject property as of the filing of the *Lis Pendens* in this action were Mark Ostendorff, the original mortgagors.

9. The Note and Mortgage contain the following terms and conditions:

a. The Plaintiff shall be entitled to receive on the first day of each and every month installment payments which are amortized over the period of time which is set forth therein and in the event of a default in payment of any monthly installment the Plaintiff is entitled, after first giving thirty (30) days prior notice, to accelerate the entire indebtedness and to demand payment thereof without further notice.

b. The Plaintiff shall be entitled to receive late charges for any monthly installment payment which is overdue.

c. The Mortgagor(s) shall be required to provide insurance to protect against loss to the property and certain minimal escrow funds shall be established and maintained with the Plaintiff for the purpose of paying for such insurance.

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d. The Mortgagor(s) shall be required to pay for all costs of property taxes assessed by governmental authorities and certain minimal escrow funds shall be established and maintained with the Plaintiff for the purpose of paying such taxes.

e. The Mortgagor(s) shall, at the Plaintiff's option, be required to provide mortgage insurance to protect the Plaintiff's interest in securing repayment of the mortgage loan and certain minimal escrow funds shall be established and maintained with the Plaintiff for the purpose of paying for such insurance.

f. The Plaintiff is entitled to be reimbursed for all expenses which it shall incur in pursuing the remedies to which it is entitled in the event of a default by the Mortgagor(s), including reimbursement of its reasonable attorney's fees and costs of title evidence.

g. The Mortgage is NOT owned, securitized or guaranteed by Fannie Mae, Freddie Mac or by a servicer participating in the Home Affordable Modification Program (HMP), and is not subject to modification under the HMP for the following reason(s): The property is vacant.

10. Payment due on the Mortgage Note has not been made, the Plaintiff's prospects for repayment have been significantly impaired and the Plaintiff has elected to accelerate payment of the entire indebtedness and has placed the Note and Mortgage in the hands of its attorney of record herein for collection.

11. Having considered the nature, extent and difficulty of the services rendered (the field of mortgage foreclosures being a unique area of practice); the time involved in reviewing the various loan documents; performing the title search; preparing the pleadings; and preparing for, and attending, hearings; the professional standing of Plaintiff's attorney; the fee customarily charged in this jurisdiction for similar services; and the beneficial results obtained for the



Plaintiff, I find that the sum of \$13,420.00 is a reasonable attorney's fee for the Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of the within action. 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 a reasonable time. In such event the Plaintiff may apply to this Court for such additional expenses of collection and attorney's fees as may be reasonable under the circumstances.

12. The amount due and owing on the note and mortgage, with interest at a 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:

Payoff good through 10/01/2013:

Principal	393,042.10
Interest	170,302.99
Taxes	17,390.72
BPO	975.00
Atty fees	13,420.00
Total	\$595,130.81

Reinstatement good thru 10/01/2013:

Interest	170,302.99
Taxes	17,390.72
BPO	975.00
Atty fees	13,420.00
Total	\$202,088.71

13. If the amount of interest which is set forth in paragraph 12 (b) above is not calculated through the date of this judgment, the Plaintiff is entitled to such additional interest as shall accrue on the principal indebtedness at the rate of 6.75% per annum from the date to which it is calculated in this judgment order up through the date of this judgment order and shall be

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added to the above stated "Total Indebtedness" to comprise the amount of judgment indebtedness determined and entered herein.

14. Interest after the date of Judgment shall accrue at the legal rate.

15. The Plaintiff reserves the right to a personal or deficiency judgment pursuant to S. C. Code Ann. Section 29-3-660 (1976).

16. The hereinafter named Defendant(s) may have some interest in or lien upon the premises covered by the Mortgage set herein, or some part thereof, but Plaintiff alleges that such interests or liens are junior or subordinate to the lien of the Plaintiff's Mortgage, or do not attach to the property which is the subject of this action, or have been paid in full and not satisfied of record. Said liens or interests are of record in the Register of Deeds or Clerk of Court and are described as follows:

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, I conclude the following:

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

2. There is due to the Plaintiff on its note and mortgage the sum of \$ 595,130.81, representing the Total Indebtedness which is due to the Plaintiff as set forth in paragraph 12 of the Findings of Fact, together with interest thereon at the rate provided in the Note to the date hereof as set forth in paragraph 13 of the Findings of Fact, which shall, and hereby does, constitute the total judgment debt due to the Plaintiff. Interest after the date of judgment shall accrue at the legal rate.

3. The Defendant(s) liable for the aforesaid mortgage debt shall, prior to the date and time of sale of the subject property, hereinafter described, pay to Plaintiff, or the Plaintiff's

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

4. On default of payment by the Defendant(s) liable for the Mortgage debt prior to the date and time of the sale, the mortgaged premises, hereinafter described, shall be sold by the undersigned at public auction, at the York County Courthouse, in the City of York, County and State aforesaid, on some convenient sales day hereafter, on the following terms:

A. FOR CASH: The undersigned 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 the case of non-compliance within thirty (30) days the same to be forfeited and applied to the costs and then to the Plaintiff's debt.

B. Interest on the balance of the bid shall be paid to the date of compliance at the legal rate.

C. The sale shall be subject to taxes and assessments, existing easements and restrictions of record and the following senior encumbrances and liens:

D. The purchaser to pay for the deed and the cost of recording the deed.

5. If the Plaintiff is 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, the Plaintiff may pay the undersigned only the amount of the costs and expenses, crediting the balance of the bid against the Plaintiff's indebtedness.

6. Plaintiff is entitled to a deficiency judgment as set forth herein in the event the proceeds of the sale are insufficient to satisfy the indebtedness.



7. The undersigned shall, by advertisement according to law, give notice of the time and place of sale and the terms thereof; and shall execute to the purchaser, or purchasers, a deed to the premises sold.

8. The Plaintiff, or any other party to this action, or any other person may become a purchaser at such sale.

9. 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 may re-advertise the premises for sale on the next, or some subsequent, sales day, at the risk of the highest bidder, and so from time to time thereafter until full compliance shall be secured.

10. If the Plaintiff, or a representative of the Plaintiff, shall not be present at the sale, this Court shall postpone the sale to the next available sale date.

11. The undersigned shall apply the proceeds of the sale as follows:

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

NEXT: To the payment of the Plaintiff, or the Plaintiff's attorney, of the amount of the Plaintiff's indebtedness or so much thereof as the purchase money will pay against the same;

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

12. Each Defendant named herein, and all persons whomsoever claiming under such Defendant(s), shall be, and are, forever barred and foreclosed of all right, title, interest and equity of redemption in the said mortgaged premises so sold, or any part thereof.

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13. The deed of conveyance made pursuant to this judgment and said sale shall contain the names of only the Plaintiff, the Defendant(s) who was/were the title holder of the mortgaged property at the time of the filing of the *Lis Pendens*, and the Grantee and the Register of Deeds and/or the Clerk of Court is hereby authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

14. The undersigned hereby retains jurisdiction to do all necessary acts incident to this foreclosure action, including, but not limited to, the issuance of a Writ of Assistance and the disposition of any surplus funds pursuant to Rule 71(c), SCRCF.

15. After the Order Confirming Sale and Disbursements has been issued and filed, the undersigned shall direct the Register of Deeds and/or the Clerk of Court to release of record the mortgage liens being foreclosed.

16. Pursuant to Rule 77 (d), SCRCF, the Clerk of Court shall serve a notice of entry of this judgment upon all parties who are not in default for failure to appear herein.

17. In the event the successful bidder is other than the Defendant(s) in possession herein, the Sheriff of York County 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 any and all personal property located thereon, and to put the successful bidder, or his assigns, in full, quiet, and peaceable possession without delay, and to keep the successful bidder or his assigns in such peaceable possession.

18. In the event the successful bidder is other than the Defendant(s) herein and the occupants have voluntarily vacated the premises or have been ejected from the premises leaving furnishings, fixtures and items not subject to the Plaintiff's mortgage, the Plaintiff is authorized to remove therefrom all furnishings, fixtures and items not subject to the lien of the Plaintiff's

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mortgage, which personal property shall be deemed abandoned and shall be removed by the Plaintiff or its agents from the subject property by placing said personal property on the public street or highway or by any other means.

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

All that certain piece, parcel or lot of land with the improvements thereon, if any, situate, lying and being in the County of York, State of South Carolina, being shown and delineated as Lot 86 on a plat of Oxford Subdivision, Phase V, drawn by Precision Surveying, Inc., dated April 23, 2001 and recorded in the Office of the R.M.C. for York County in Plat Book B-229, Page 6 reference being made to the same for a more complete and accurate description; all measurements being a little more or less.

Being the same property conveyed to Mark Douglas Ostendorff by Deed from Penton Group, Inc., dated September 27, 2001, recorded October 2, 2001 in Book 3890, Page 190, York County, South Carolina Records.


1207 Cabin Creek Court, Fort Mill, SC 29715

TAX MAP NUMBER: 776-00-00-107

AND IT IS SO ORDERED, ADJUDGED AND DECREED.

York, South Carolina

10/1, 2013.


S. Jackson Kimball
Master In Equity for York County

ATTORNEY FOR THE PLAINTIFF:

Brian S. Tatum
S.C. Bar No.: 73975
P.O. Box 11250
Charlotte, NC 28220
(704) 307-4197
0720934sc

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STATE OF SOUTH CAROLINA

COUNTY OF YORK

SunTrust Mortgage, Inc.,

Plaintiff(s)

vs.

Mark Ostendorff,

Defendant(s).

IN THE COURT OF COMMON PLEAS

CASE NO.: 2007-CP-46-4305

NOTICE OF SALE

Under and by virtue of an Order of the Court of Common Pleas for York County, South Carolina, heretofore granted in the above entitled cause, I the undersigned, as Master In Equity on November ⁴ ~~28~~ ^{AC} 2013 commencing at 11:00AM during the legal hours of sale, at the Equity Court in the City of York, South Carolina located at 1 North Congress Street, York, SC 29745, will sell at public outcry to the highest bidder the following described property:

All that certain piece, parcel or lot of land with the improvements thereon, if any, situate, lying and being in the County of York, State of South Carolina, being shown and delineated as Lot 86 on a plat of Oxford Subdivision, Phase V, drawn by Precision Surveying, Inc., dated April 23, 2001 and recorded in the Office of the R.M.C. for York County in Plat Book B-229, Page 6 reference being made to the same for a more complete and accurate description; all measurements being a little more or less.

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1207 Cabin Creek Court, Fort Mill, SC 29715

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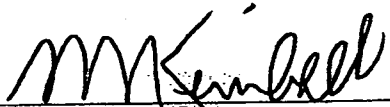
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DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

TERMS OF SALE

FOR CASH. The undersigned will require a deposit of 5.0% of the amount of the bid (in cash or equivalent) to be applied on the purchase price only upon compliance with the bid. In the of case of noncompliance of the bid within 30 days the successful bidder's deposit shall be forfeited and applied to the Court's costs and to Plaintiff's debt and the property will be re-advertised for sale upon the same terms (at the risk of the former highest bidder). Personal or deficiency judgment having been demanded or reserved, the sale will remain open for thirty (30) days pursuant to S.C. Code Ann. Section 15-39-720 (1976). The Plaintiff may waive any of its rights, including its right to a personal or deficiency judgment, at any time prior to the sale.

Interest at 6.75% the legal rate shall be paid through the day of compliance on the amount of the bid. The purchaser shall pay for preparation and recording of the deed and required transfer taxes by any governmental authority. If the Plaintiff or its representative is not present at the sale, the sale shall be postponed to the next available sale date. The sale shall be subject to taxes and assessments, existing easements and restrictions of record.

Oct. 1
~~September 30~~, 2013


S. Jackson Kimball
Master In Equity for York County

ATTORNEY FOR THE PLAINTIFF:
Brian S. Tatum
S.C. Bar No.: 73975
P.O. Box 11250
Charlotte, NC 28220
(704) 307-4197
0720934sc



STATE OF SOUTH CAROLINA

COUNTY OF YORK

SunTrust Mortgage, Inc.,

Plaintiff(s)

vs.

Mark Ostendorff

Defendant(s).

IN THE COURT OF COMMON PLEAS

CASE NO.: 07-CP-46-4305

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the final foreclosure hearing has been scheduled and will be held on Tuesday, October 1, 2013 commencing at 9:30 o'clock a.m. before the Master in Equity, at the York County Courthouse, 1 North Congress Street, York, South Carolina 29745. No further notice of this hearing shall be given.

Respectfully submitted this 19th day of August, 2013

TATUM LAW FIRM, PLLC

By: 

BRIAN S. TATUM
South Carolina Bar No. 73975
Attorney for Plaintiff

PO Box 11250
Charlotte, North Carolina 28220
Phone: (704) 307-4350
Efax: (704) 754-4140
Email: BSTatum@tatumlegal.com

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DAVID DANIELSON
C.C.P. & G.S.
YORK COUNTY, SC

FORM 4

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF York

IN THE COURT OF COMMON PLEAS FILED-RECEIVED CASE NO. 2007-CP-46-4305

SunTrust Mortgage, Inc.

2013 OCT -9 AM 9:26 Mark Ostendorff

PLAINTIFF(S)

DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY SC

DEFENDANT(S)

CHECK ONE:

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON): Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded; Other
 NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

- See attached order. (Formal order to follow)
- Statement of Judgment by the Court:

Dated at York, South Carolina, this 1st day of October, 2013.


PRESIDING JUDGE

This judgment was entered on the 1st day of October 2013, and a copy mailed first class this 9 day of Oct, 20 13 to attorneys of record or to parties (when appearing pro se) as follows:

Brian S. Tatum
PO Box 11250
Charlotte, NC 28220
ATTORNEY(S) FOR PLAINTIFF

Mark Ostendorff, pro se
137 King Street
Central, SC 29630
ATTORNEY(S) FOR DEFENDANT

CLERK OF COURT

November 21, 2013

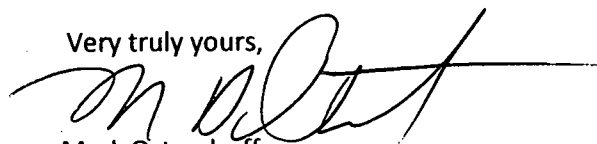
The Honorable Jenny Abbott Kitchens
Clerk, South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

Re: SunTrust Mortgage v. Mark Ostendorff
Appellant Case No. 2013- 002432

Dear Ms Kitchens :

Enclosed is a copy of the judgment and order for the above case. This is in reply to your letter dated November 18, 2013.

Very truly yours,



Mark Ostendorff
135 Cedar Creek Circle
Fort Mill, SC 29630
(864) 640-3340

cc: Brian S. Tatum
Tatum Law Firm
PO Box 11250
Charlotte, NC 28220
(704) 307-4197

w/ →
COPY
ORDER
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JUDGMENT

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NOV 26 2013

SC Court of Appeals