

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)
)
 BANK OF THE OZARKS,)
)
 PLAINTIFF,)
 vs.)
)
 CITY LOFT, LLC, MATTHEW S.)
 McALHANEY, JOHN HUNTER, TBM,)
 LLC, H. RICHARD HILLER, JR.,)
 LEWIS H. WRIGHT, RON LEWIS,)
 PERMINDER BINDRA, THOMAS)
 DANNEMILLER, and HANK, INC.)
 OF GREER,)
)
 DEFENDANTS.)

IN THE COURT OF COMMON PLEAS
 FOURTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION NO.: 2011-CP-07-1684

REPORT AND JUDGMENT
 OF FORECLOSURE AND SALE

13 OCT 30 PM 4:22
 BEAUFORT COUNTY S.C.
 CLERK OF COURT

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SC Court of Appeals

THIS MATTER CAME BEFORE ME on October 28, 2013, pursuant to Plaintiff's, Bank of the Ozarks' (hereinafter referred to as "Bank" or "Plaintiff"), Notice of Foreclosure and Damages Hearing. The testimony was taken, which is reported herewith, and from the testimony and evidence, I find and conclude as follows:

FINDINGS OF FACT:

1. The parties and the subject matter of this case are properly before this Court.
2. The Lis Pendens, Summons and Complaint were filed by Plaintiff on April 12, 2011.
3. Service of Plaintiff's Lis Pendens, Summons and Complaint was made upon the Defendants, City Loft, LLC (hereinafter individually referred to as "City Loft"), Matthew S McAlhaney (hereinafter individually referred to as "McAlhaney"), TBM, LLC, John Hunter, H. Richard Hiller, Jr., Lewis H. Wright, Ron Lewis, Perminder Bindra, Thomas Dannemiller and

Hank, Inc. of Greer as is shown by the Affidavits of Service and Acceptances of Service filed herein.

4. Defendant City Loft filed for bankruptcy protection on October 3, 2011. Plaintiff was granted a relief from stay on February 1, 2012, and the bankruptcy proceeding was terminated on August 15, 2012.

5. Plaintiff amended its Complaint on March 23, 2012.

6. Defendants Lewis H. Wright, Ron Lewis, Perminder Bindra and Hank, Inc. of Greer are in default as shown by the Affidavit of Default filed herein.

7. Defendant Thomas Dannemiller has appeared in this action, having filed an Answer, as amended, per the record herein. Defendants TBM, LLC, John Hunter and H. Richard Hiller, Jr. have appeared in this action, having filed Answers and Counterclaims, as amended, per the record herein.

8. The Counterclaims of Defendants TBM, LLC, John Hunter and H. Richard Hiller, Jr. were dismissed by a Consent Order filed herein.

9. On August 1, 2013, the Court granted Plaintiff's Motion for Summary Judgment with respect to Plaintiff's claims for Mortgage Foreclosure and Breach of Guaranty as to Defendants City Loft and McAlhaney. The Court also dismissed all affirmative defenses and counterclaims raised by Defendants City Loft and McAlhaney.

10. On August 12, 2013, Defendants City Loft and McAlhaney filed a Motion to Reconsider the Court's Order Granting Plaintiff's Motion for Summary Judgment, which motion was denied by Form Order on October 9, 2013, and served on Defendants October 28, 2013.

11. Defendants were notified of the time, date and place of the Hearing in this matter

on October 17, 2013 by mailing said Notice to Defendants.

12. The records of this action show that this suit is upon a cause of action for the foreclosure of a Mortgage on certain real property being known as 301 Carteret Street (LOT D, BLOCK 37), in Beaufort County, South Carolina, owned by Defendant City Loft as described in the Amended Complaint. For value received, Defendant City Loft, made, executed and delivered a Promissory Note, dated October 15, 2007, with respect to Loan No.: 4400001436 (hereinafter referred to as the "Note"), promising thereby to pay to the order of Woodlands Bank, predecessor-in-interest to Plaintiff, the principal sum of Three Million Nine Hundred Ten Thousand and 00/100 Dollars (\$3,910,000.00). Other terms and conditions are stated in the Note, which is of record herein.

13. Contemporaneously with the execution of the Note, and for the purpose of securing the payment thereof and any renewals thereof, Defendant City Loft executed and delivered to Plaintiff's predecessor, its successors and assigns, a Mortgage (hereinafter referred to as the "Mortgage"), which is the same as described in the Amended Complaint. The Mortgage described was duly recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 2638 at Page 1483 on October 16, 2007.

14. On the same day as the Mortgage, October 15, 2007, Defendant City Loft, for good and valuable consideration received, executed and delivered to Plaintiff's predecessor-in-interest, an Assignment of Leases and Rents (hereinafter the "Assignment"), which is the same as described in the Amended Complaint.

15. Also on the same day as the execution of the Note, Mortgage and Assignment, October 15, 2007, Defendant McAlhaney signed and delivered to Plaintiff's predecessor-in-

interest, Woodlands Bank, a Guaranty, whereby Defendant McAlhaney, absolutely and unconditionally, personally guaranteed the full and prompt payment of the debt, liability or obligation of Defendant City Loft arising out of the Note and Mortgage.

16. On or about July 1, 2009, Defendant City Loft, for value received, executed and delivered in writing, a second Promissory Note, with respect to Loan No.: 4400001436 (hereinafter referred to as the "Renewal Note" and collectively with the Note as the "Note"), promising thereby to pay to the order of Woodlands Bank, predecessor-in-interest to Plaintiff, the principal sum of Three Million Nine Hundred Ten Thousand and 00/100 Dollars (\$3,910,000.00). Other terms and conditions are stated in the Renewal Note, which is of record herein.

17. On July 16, 2010, Woodlands Bank was closed by the Office of Thrift Supervision and the Federal Deposit Insurance Corporation (hereinafter the "FDIC") was named Receiver. That same day, the FDIC, as Receiver for Woodlands Bank, transferred all right, title and interest of the Receiver in and to certain assets of Woodlands Bank, including the loan, and loan documents referenced herein, to Plaintiff pursuant to that certain Purchase and Assumption Agreement between Plaintiff and the FDIC, dated July 16, 2010.

18. Subsequently, the FDIC, as Receiver of Woodlands Bank, assigned and transferred the aforementioned security agreements, together with all of the underlying debts described in the security agreements to Plaintiff pursuant to a Master Assignment, dated September 10, 2010 and recorded on September 13, 2010 in Record Book 2990 at Page 1821.

19. Contrary to the intention of the parties, and through a scrivener's error, inadvertence or mistake, the aforementioned Mortgage and Assignment were omitted from

Exhibit A of the Master Assignment, which Exhibit A identifies the security instruments in Beaufort County assigned and transferred to Plaintiff.

20. The mistake of the drafter of the Master Assignment in failing to properly include the Mortgage and Assignment on Exhibit A was not known to either party at the time the Master Assignment was executed and recorded with the Office of the Register of Deeds for Beaufort County, South Carolina. Similarly, this mistake was not discovered by Plaintiff until August 1, 2011, after the commencement of the current matter.

21. On August 4, 2011, Plaintiff recorded an Amendment to Master Assignment, dated August 2, 2011, in Record Book 3075 at Page 1422, which includes the Mortgage and Assignment on Exhibit A identifying the security instruments assigned to Plaintiff by the FDIC.

22. The Mortgage constitutes a first lien on the subject property.

23. The subject property is not an "Owner-Occupied Dwelling" as defined in the Administrative Order of the Supreme Court of South Carolina dated May 2, 2011 (2011-05-02-01), and therefore, the Order is inapplicable to this matter.

24. The installment of principal and interest on the Note due on October 29, 2009 was not paid. Defendant City Loft has not made any subsequent payments on the Note; and therefore, Defendant City Loft is in default on the Note.

25. Defendant McAlhaney has not made any payments pursuant to the Guaranty and, therefore, is also in default.

26. Plaintiff has placed the Note and Mortgage in the hands of an attorney herein for collection.

27. The sum of Seventy One Thousand Eight Hundred Thirty Three and 58/100

Dollars (\$71,833.58) is a reasonable fee to allow as attorneys' fees and costs for Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of the within action, under the terms of the Note and Mortgage.

28. 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 attorneys' fees, is as follows:

(A)	Principal due as of October 28, 2013	\$3,916,362.50
(B)	Interest to October 28, 2013	\$ 868,664.64
(C)	Late Charges	\$ 215,241.06
(D)	Appraisal Fee	\$ 13,450.00
(E)	Property Taxes-2010	\$ 21,075.94
(F)	Property Taxes-2012	\$ 21,597.99
(G)	Collection Fees and Costs (including legal fees for the current litigation and the bankruptcy proceeding for Defendant City Loft through September 30, 2013, less any payments from the Court-appointed Receiver through October 25, 2013)	\$ 45,395.01
(H)	Additional Legal Fees and Costs from October 1, 2013 through conclusion of action	\$ 9,254.00

TOTAL DEBT through October 28, 2013 **\$5,111,041.14**

Interest for the period from the date shown in (A) above through the date of the judgment to be entered herein at that per diem rate of \$583.78472 to be added to the above stated "total debt" to comprise the amount of the judgment debt to be entered herein at the per diem rate pursuant to the terms of the Note and Mortgage, through the date to which such interest is computed.

29. Plaintiff is seeking foreclosure of the Mortgage and has in the Complaint expressly demanded the right to a personal or deficiency judgment against Defendant City Loft. Plaintiff has also expressly demanded a personal judgment for the amount of any deficiency against Defendant McAlhaney pursuant to the Guaranty.

CONCLUSIONS OF LAW

I, therefore, conclude as follows:

1. That proper jurisdiction is in Beaufort County, South Carolina, and that this matter is properly before this Court.

2. That Defendants City Loft and McAlhaney are liable to Plaintiff for all amounts due for payments, accrued interest and the costs of collection of same, including attorneys' fees.

3. That Plaintiff should have judgment of foreclosure of the Mortgage.

4. That said mortgaged property should be ordered sold at public auction after due advertisement. The sale should be made subject to taxes and assessments that are due on the day of sale. That after making the required deposit, the successful bidder at the sale should be required to pay interest at the rate set forth in the obligation described in the Complaint from the date of sale to the date of compliance.

5. That the proceeds arising from such sale should be applied first to the costs and disbursements of this action; and next, to the payment and discharge of the amount of Plaintiff's debt and interest, or so much thereof as the proceeds will pay, and any surplus should be held pending further Order of the Court.

6. The deed of conveyance made pursuant to said sale should contain the names of only the Plaintiff and the Defendant who is the titleholder of the mortgaged property at the time of the filing of the Lis Pendens of the within action and the name of the grantee, and the Clerk of Court/Register of Deeds should be authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. That there is due to Plaintiff on the obligation set forth in the Complaint the sum of Five Million One Hundred Eleven Thousand Forty One and 14/100 Dollars (\$5,111,041.14) as set out in paragraph Twenty Eight (28) plus additional costs required of this action, to specifically include the commission paid to the Court, if Plaintiff is the successful purchaser at the sale of the property. Plaintiff will have judgment against Defendants City Loft and McAlhaney, jointly and severally, in the amount set forth above. These sums will represent the total debt due Plaintiff.

2. The amount due in the preceding paragraph shall constitute the total judgment debt due Plaintiff and shall bear interest hereafter at the judicial rate.

3. That the Defendants liable for the aforesaid debt shall on or before the date of sale of the property interest 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.

4. That on default of payment at or before the time herein indicated, the property interest described in the Complaint, as hereinafter set forth, be sold by the Court at public auction at the Beaufort County Courthouse in the City of Beaufort, County and State aforesaid, on some convenient sales day hereafter as specified in the Notice of Sale (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 Court will require a deposit of Five percent (5%) on the amount of the bid (in certified funds), 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 Plaintiff's debt.

B. Interest on the balance of the bid shall be paid to the day of compliance at the rate of Five and 375/1000 percent (5.375%).

C. The sale shall be subject to existing easements and restrictions of record.

D. Purchaser to pay for the cost of recording the Deed.

5. If Plaintiff is the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness due Plaintiff in full, Plaintiff may pay to the Court only the amount of the costs and expenses, crediting the balance of the bid on Plaintiff's indebtedness.

6. Personal or deficiency judgment being demanded, the bidding will remain open for a period of thirty (30) days following the date of sale.

7. That the undersigned, 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 property interest 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 thirty (30) days after date of sale, then the Court 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.

8. That the Court will apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of the costs and expenses of this action;

NEXT: To the payment to Plaintiff or Plaintiff's attorney, of the amount of

Plaintiff's debt and interest or so much thereof as the purchase money will pay on the same;

NEXT: Any surplus will be held pending further Order of this Court.

9. It is further ORDERED, ADJUDGED AND DECREED that in the event the successful bidder(s) is/are other than Defendant in possession herein, the Sheriff of Beaufort County is ordered 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(s) or his assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder(s) or his assigns in such peaceable possession.

10. The Receiver shall continue to maintain custody, control and possession of the property subject to this action, to perform all acts as provided by law, including, but not limited to management, maintenance and upkeep of the property, and collection of all rents accruing, to be applied by the direction of the Court. The Defendants are hereby enjoined from the property and denied access thereto, exclusive possession, control and access being afforded to Plaintiff pending assumption of ownership by the successful third party bidder at the foreclosure sale.

11. This Order shall act as notice of Plaintiff's full authority to act upon and exercise control over the property to any third party, including, but not limited to service providers, maintenance companies, utilities, water, sewer and/or power providers, as well as any governmental agencies.

12. And it is further ORDERED, ADJUDGED AND DECREED that the Defendants named herein, and all persons whatsoever claiming under them, be forever barred and foreclosed of all right, title, interest, and equity of redemption in the said premises so sold, or any part thereof.

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 property interest at the time of the filing of the Lis Pendens 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 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 and/or Rule to Show Cause for Ejectment.

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

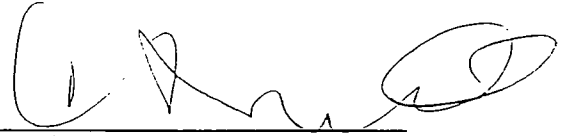
ALL that certain piece, parcel or tract of land situate, lying and being in the City of Beaufort, Beaufort County, South Carolina, being a part of LOT D, BLOCK 37, as shown on the survey prepared by the U.S. Direct Tax Commission for the District of South Carolina, being bounded on the North by lands now, or formerly, of the heirs of A. D. Morrall, on the East by lands now, or formerly, of Mabel Runnette, on the South by Port Republic Street and on the West by Carteret Street and being more particularly shown and described on a plat prepared by R. D. Trogdon, Jr., SCRLS, dated December 27, 1976, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 25 at Page 91. For a more detailed description as to courses, metes, bounds and distances, reference may be made to the plat prepared by Zyad A. Khalil, RLS, dated July 1, 2003 and recorded in Record Book 1800 at Page 894.

This property is subject to all applicable covenants, restrictions and easements of record in the Office of the Register of Deeds for Beaufort County, South Carolina.

This being the property conveyed to City Loft, LLC by Deed of Hank, Inc. of Greer, dated October 15, 2007 and recorded October 16, 2007 in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 2638 at Page 1480.

TMS#: R121 004 000 0887 0000

[Signature Page to Report and Judgment of Foreclosure and Sale
CIVIL ACTION NO.: 2011-CP-07-1684]



The Honorable Carmen T. Mullen
Fourteenth Judicial Circuit, Beaufort County

October 20, 2013
Beaufort, South Carolina