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SOSC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals
APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

Joyce McDonald, Clerk of Court

Case No. 2013-CP-28-0601

Business Loan Center, LLC.....Respondent.

v.

Subham Hospitality, Inc. d/b/a Knights Inn a/k/a Deluxe Inn,
Sudhir T. Mehta and Bhariben Mehta.....Appellants.

**RESPONDENT'S MOTION TO DISMISS AND
MEMORANDUM ON APPEALABILITY**

Respondent Business Loan Center ("BLC") submits the following Motion to Dismiss and Memorandum pursuant to Rule 240 of the South Carolina Appellate Court Rules.

SUMMARY

- Appellants' appeal is an improper appeal of an interlocutory order.
- S.C. Code Ann. § 14-3-330 does not afford this Court appellate jurisdiction under the circumstances.
- The Order at issue is an Order of Reference which is not immediately appealable.

STATEMENT OF THE ISSUE BEFORE THE COURT

On or about December 26, 2013 BLC filed a Motion for Order of Reference accompanied by a proposed Order of Reference with the Kershaw County Clerk of Court. (Motion for Order of Ref.). The Motion accurately reflected the nature of the action as

one seeking to “foreclose a note and mortgage.” The Kershaw County Clerk of Court executed the Order of Reference on January 2, 2014 without conducting a hearing.

Subham did not file any objection or motion for reconsideration with the lower court. A Notice of Appeal was filed by Appellants on February 18, 2014. Appellants’ Initial Brief was filed with the Court on March 20, 2014. The singular focus and basis for the appeal is Appellant’s assertion that the Order of Reference impermissibly deprived them of their right to a jury trial. The underlying foreclosure action is purely equitable in nature and without alleging any compulsory legal counterclaims, Appellants are not entitled to a trial by jury as a matter of right.

Appellants have impermissibly appealed an interlocutory order over which this Court does not have jurisdiction to hear. Under the circumstances, the interlocutory order does not fall within the narrow exceptions of S.C. Code Ann. § 14-3-330(2) that would afford this Court jurisdiction over the matter at this stage. Accordingly, BLC respectfully moves this Court to dismiss the Appellants’ improper appeal of the Order of Reference.

FACTUAL AND PROCEDURAL BACKGROUND

On September 4, 2002 Appellants Subham Hospitality, Inc. d/b/a Knights Inn closed a loan with AMRESKO Independence Funding, Inc. (*hereinafter* AMRESKO) for the principal sum of Seven Hundred Eight-Eight Thousand and 00/100 Dollars (\$788,000.000). Appellants pledged multiple forms of collateral as security on the Note; executing and delivering to AMRESKO a mortgage on real property, assignment of leases and rents, and a Security Agreement. As further security on the Note Appellants Sudhir T. Mehta and Bhartiben Mehta executed and delivered personal Guaranties. On January 31, 2003 AMRESKO assigned the Note, mortgage, assignment of leases and

rents, security agreement, UCC filings and the Guaranties to BLC. The Note, additional loan documents, and collateral underwent a later series of assignments and are currently owned by BLC.

Appellants defaulted on the Note and on August 28, 2013 BLC filed an Amended Complaint seeking (1) to have its mortgage on certain real property pledged as collateral declared a first lien; (2) judgment against the mortgaged premises for the sum of the debt; (3) to have the mortgaged premises sold, the proceeds applied to the debt, and asking the Court that in the event a deficiency remains that it grant BLC deficiency judgments against the individual Defendants as Guarantors of the debt. (Amend. Compl. at 9). The singular cause of action alleged is one for foreclosure of real property, through which BLC seeks the remedies noted above. (Amend. Compl. at ¶ 34-36). On November 11, 2013 Appellants Subham Hospitality, Inc. d/b/a Knights Inn a/k/a Deluxe Inn, Sudhir T. Mehta and Bhariben Mehta (*hereinafter collectively* "Subham" or "Appellants") filed an Answer containing a general denial and pleadings labeled as "defenses" entitled (1) lack of standing; (2) accounting; (3) reservation of affirmative defenses; and (4) non-waiver. (Ans. at 4-5). The Answer demands a jury trial. It does not contain any counterclaims.

On or about December 26, 2013 BLC filed a Motion for Order of Reference accompanied by a proposed Order of Reference with the Kershaw County Clerk of Court. (Motion for Order of Ref.). The Motion accurately reflected the nature of the action as one seeking to "foreclose a note and mortgage." The Kershaw County Clerk of Court executed the Order of Reference on January 2, 2014 without conducting a hearing.

No objection to or motion for reconsideration of the Order of Reference was filed with the lower court. Appellants filed a Notice of Appeal on February 18, 2014 and their

Initial Brief on March 20, 2014 challenging the Order of Reference. The singular focus and basis for the appeal is Appellant's assertion that the Order of Reference impermissibly deprived them of their right to a jury trial.

On March 25, 2014 BLC sent Appellants a letter stating it would voluntarily vacate the Order of Reference if and when Appellants' withdrew this appeal. (Glidewell Ltr. March 25, 2014 to French). BLC enclosed a proposed Consent Order Vacating the Order of Reference with that March 25th correspondence. (Proposed Consent Order). BLC asked that Appellants respond on or before March 31st so that it may take the appropriate action. Appellants did not avail themselves of BLC's offer to vacate the Order of Reference.

LEGAL ARGUMENT AND AUTHORITIES

I. The Court of Appeals Does Not have Appellate Jurisdiction over this Appeal under S.C. Code Ann. § 14-3-330(1) because the Order of Reference is Not a Final Judgment

Under South Carolina Code Section 14-3-330, appellate jurisdiction generally exists only over actions at law in which a final judgment has been entered, subject to specified exceptions that are inapplicable under the present circumstances. *See* S.C. Code Ann. § 14-3-330(1); *see also* SCRCP 72 ("Appeal may be taken, as provided by law, from any final judgment or appealable order."); SCACR 201(a) ("Appeal may be taken, as provided by law, from any final judgment, appealable order or decision."). Section 14-3-330 codifies the "final judgment rule," which prevents "fragmentary and premature appeals that unnecessarily delay the administration of justice and [ensures] that the trial courts fully and finally dispose of the case before an appeal can be heard." 4 AM. JUR. 2D *Appellate Review* § 81 (2014).

The Order of Reference from which Appellants appeal is not a final judgment but rather an interlocutory order. “[I]n determining whether the court’s order constitutes a final judgment, we must inquire whether the order finally decides an issue on the merits.” *Long v. Sealed Air Corp.*, 391 S.C. 483, 489, 706 S.E.2d 34 (Ct. App. 2011). “An order involves the merits if it finally determines some substantial matter forming the whole or part of some cause of action or defense in the case.” *Green v. City of Columbia*, 311 S.C. 78, 80, 427 S.E.2d 685 (Ct. App. 1993). The Order of Reference does not determine any matter forming part of a cause of action or defense in this matter and is therefore not a final judgment.

South Carolina courts have consistently held orders of reference in foreclosure actions without any additional actions at law or compulsory legal counterclaims are not immediately appealable. *North Carolina Fed. Sav. & Loan Ass’n v. Twin States Dev. Corp.*, 289 S.C. 480, 481, 347 S.E.2d 97 (1986)(South Carolina Supreme Court granted Respondent’s motion to dismiss appeal finding that order of reference in foreclosure action not immediately appealable under SCRCP 72 and § 14-3-330.); *See also Williford v. Downs*, 265 S.C. 319 (1975); *Collier v. Green*, 244 S.C. 367, 137 S.E.2d 277 (1964); *Brock v. Kirkpatrick*, 69 S.C. 231 (1901); *Ferguson v. Harrison*, 34 S.C. 169 (1890). As such, this Court does not have interlocutory appellate jurisdiction over Subham’s appeal of the Order of Reference unless a limited exception to the final judgment rule in Section 14-3-330(2)(a) applies.¹ *Hagood v. Sommerville*, 362 S.C. 191, 194, 607 S.E.2d 707

¹ The other subsections of Section 14-3-330 are inapplicable to the present situation: Section 14-3-330(2)(b) and (c) pertain to orders that grant or refuse a new trial and orders striking pleadings, respectively; Section 14-3-330(3) applies to an order made in a “special proceeding or upon a summary application in any action after judgment;” and Section 14-3-330(4) applies to orders related to injunctions or the appointment of a receiver. It is thus unnecessary to address these subsections in any detail.

(2004) (“An order generally must fall into one of several categories set forth in that statute in order to be immediately appealable.”).

II. The Court of Appeals Does Not Have Appellate Jurisdiction Over the Order of Reference under S.C. Code Ann. § 14-3-330(2)(a)

Section 14-3-330(2)(a) confers appellate jurisdiction over an interlocutory order “affecting a substantial right made in an action when such order in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action.” S.C. Code Ann. § 14-3-330(2)(a). Moreover, “[t]he provisions of Section 14-3-330, including subsection (2), have been narrowly construed and immediate appeal of various orders issued before or during trial generally has not been allowed. Piecemeal appeals should be avoided and most errors can be corrected by the remedy of a new trial.” *Hagood*, 362 S.C. at 196, 607 S.E.2d at 709.

Appellants’ filing of this appeal is an endorsement of their position that the Order of Reference is an immediately appealable interlocutory order under this subsection. This contention is incorrect. The Order of Reference does not meet any of the elements of Section 14-3-330(2)(a) and therefore, is not immediately appealable.

A. The Order of Reference Does Not Affect a “Substantial Right” Because Defendants Do Not Have the Right to a Jury Trial

Only interlocutory orders affecting the most fundamental rights have been allowed to be immediately appealed under Section 14-3-330(2). *See, e.g., Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2004) (holding that disqualification of a party’s attorney is immediately appealable because the right to be represented by attorney of one’s choosing is a substantial right); *McLaughlin v. Strickland*, 279 S.C. 513, 309 S.E.2d 787 (Ct. App. 1983) (holding that interlocutory order denying leave for father to withdraw consent to the adoption of the father’s minor child was immediately

appealable). While a right to a jury trial is substantial, one must possess that right in order to be deprived of it. As the South Carolina Supreme Court recognized “[a]n order denying a party a jury trial is not immediately appealable unless it deprives him of a mode of trial to which he is entitled as a matter of right.” *Citizens & Southern Real Estate Serv. v. Massengale*, 290 S.C. 299, 300, 350 S.E.2d 191 (1986)(*emphasis added*)(Held mortgagor not entitled to jury trial on equitable counterclaims and permissive legal counterclaims and, thus, was not deprived of mode of trial to which she was entitled as matter of right, necessary for order denying jury trial to be immediately appealable); *See also Brown v. Greenwood School Dist. 50 Bd. Of Trustees*, 344 S.C. 522, 544 S.E.2d 642 (Ct. App. 2001); *Rowe Furniture Corp. v. Carolina Wholesale Furniture Co., Inc.*, 292 S.C. 575, 357 S.E.2d 725 (1987) (court held that where a defendant is not entitled as a matter of right to a jury trial, an order denying a jury trial is not immediately appealable); *North Carolina Federal S & L Ass’n v. Twin States Dev. Corp.*, 289 S.C. 480, 347 S.E.2d 97 (1986)(an order of reference in a mortgage foreclosure case is not subject to immediate appeal). In this case Appellants are not entitled to a jury trial as a matter of right.

“Generally, the relevant question in determining the right to trial by jury is whether an action is legal or equitable.” *Lester v. Dawson*, 327 S.C. 263, 267, 491 S.E.2d 240 (1997). There is no right to a jury trial for equitable actions. *Id.* However, a party is entitled to a trial by jury as a matter of right upon actions at law. *Floyd v. Floyd*, 306 S.C. 376, 379, 412 S.E.2d 397 (1991). A mortgage foreclosure action being equitable in nature requires the presence of an additional legal cause of action in the Complaint or plea of compulsory legal counterclaims in the Answer to afford a defendant

the right to a jury trial as to those matters. *Wells Fargo Bank, N.A. v. Smith*, 398 S.C. 487, 494, 730 S.E.2d 328 (Ct. App. 2012); *U.S. Bank Trust Nat'l Ass'n v. Bell*, 385 S.C. 364, 373, 684 S.E.2d 199 (Ct. App. 2009)(“A mortgage foreclosure is an action in equity.”); *C&S Real Estate Servs., Inc. v. Massengale*, 290 S.C. 299, 302, 350 S.E.2d 191 (1986)(If the complaint is equitable and the counterclaim legal and compulsory, the defendants have the right to a jury trial on the counterclaim.).

The singular cause of action alleged in this case is one for foreclosure of real property, through which BLC seeks equitable remedies. (Amend. Compl. at ¶ 34-36).² The Answer contains a general denial and pleadings labeled as “defenses” entitled (1) lack of standing; (2) accounting; (3) reservation of affirmative defenses; and (4) non-waiver. (Ans. at 4-5). Appellants did not plead any counterclaims. The pleadings reveal that the present action is purely equitable in nature. Lacking any additional legal claims or compulsory legal counterclaims, Appellants are not entitled to a jury trial as a matter of right. Therefore, the entry of the Order of Reference does not affect a substantial right and is not immediately appealable under Section 14-3-330(2)(a).

Appellants argue that BLC’s Complaint contains both equitable and legal causes of action, the latter arising out of Plaintiff’s plea for a deficiency judgment against the individual defendants as guarantors. (App. Br. at 3-5). Appellants attempt to characterize BLC’s plea for a deficiency judgment against the guarantors as a cause of action that is distinct from the foreclosure. (See App. Br. at 4)(“Respondent chose to file a case with multiple causes of action...for foreclosure against Subham Hospitality, Inc.

² BLC filed the foreclosure seeking (1) to have its mortgage on certain real property pledged as collateral declared a first lien; (2) judgment against the mortgaged premises for the sum of the debt; (3) to have the mortgaged premises sold, the proceeds applied to the debt, and asking the Court that in the event a deficiency remains that it grant BLC deficiency judgments against the individual Defendants Guarantors. (Amend. Compl. at ¶ 34-36).

and actions to collect on guaranties against Sudhir T. Mehta and Bhartiben Mehta.”). This assertion is simply inaccurate.

The Amended Complaint contains a singular equitable cause of action for foreclosure, and as a part of the relief requested, BLC asks that the Court award a deficiency judgment against the guarantors. (Amend. Compl. ¶ 36).³ BLC’s plea for a deficiency judgment against the individual defendant guarantors does not constitute a separate legal cause of action upon which Appellants have a right to trial by jury. Rather, it is merely incidental relief within the context of a foreclosure action that will only be pursued if the foreclosure sale does not satisfy the debt. *Bartles v. Livingston*, 282 S.C. 448, 454, 319 S.E.2d 707 (Ct. App. 1984)(“In this case the deficiency judgment was incidental relief in an action for foreclosure of a mortgage on real property.”). BLC, as a foreclosure plaintiff, is entitled to the equitable relief of a deficiency judgment. 27 S.C. JUR. *Mortgages* § 139 (2014) citing S.C. Code Ann § 29–3–660 (1976)(“In general, if mortgaged premises are sold under a foreclosure decree and fail to bring a sufficient amount to satisfy the debt, the mortgagee is entitled, absent any statutory limitation or waiver on his part, to a personal judgment for the remaining deficiency.”); *See also American Gen. Fin. Serv., Inc. v. Brown*, 376 S.C. 580, 658 S.E.2d 99 (2008). Thus, the deficiency judgments sought by BLC against the individual Defendants as Guarantors are simply part of the recognized relief available to it in the foreclosure action and do not constitute a separate or distinct legal claim as Appellants argue.

³ “Bank is informed, believes, and alleges that it is entitled to a deficiency judgment against Debtor and Guarantors for any deficiency owing after application of the proceeds from the sale of the mortgaged premises and does hereby ask for personal or deficiency judgment in the event that the proceeds of the sale or value of the property acquired by Bank at sale are not adequate to satisfy the indebtedness due Bank under the terms of the subject Note, Mortgage, Assignment of Leases and Rents, Security Agreement (and Assignment of Rights), and Guaranties.” (Amend. Compl. ¶ 36).

Appellants' argument is premised upon the faulty notion that a plea for a deficiency judgment in a foreclosure suit constitutes a "suit on a guaranty" as a distinct action at law separate and apart from the equitable foreclosure action. (App. Br. at 5)("Because the Respondent chose to sue on a guaranty, there exists an action at law.").

A plea for deficiency judgment against guarantors in a foreclosure action is not the same as a suit on a guaranty. A suit on a guaranty is a breach of contract action and therefore recognized as an action at law. *Sterling Dev. Co. v. Collins*, 309 S.C. 237, 240, 421 S.E.2d 402 (1992)(An action for breach of contract is an action at law.). Whereas a plea for deficiency judgment against guarantors in a foreclosure action is not alleging breach of the guaranty agreement but rather asking the Court to award a deficiency judgment against the guarantor if the foreclosure sale does not satisfy the debt. As noted above, it is a plea for equitable relief, and not some independent cause of action or "suit on the guaranty" separable from the foreclosure claim. *See Collier*, 244 S.C. 367, 137 S.E.2d 277 (1964)(South Carolina Supreme Court held that all issues in the foreclosure of a real estate mortgage were equitable in nature, since they were not separable from the plaintiff's equitable cause of action for foreclosure and were properly before the court in equity to determine.). Appellants' argument fails to recognize this important and consequential distinction.

Appellants cite *Crafton v. Brown*, 346 S.C. 347, 550 S.E.2d 904 (Ct. App. 2001) and *Southern Bank & Trust Co. v. Harley*, 295 S.C. 423, 368 S.E.2d 905 (1988) in support of their assertion that "[a] suit on a guaranty is an action to collect money and an action at law." (App. Br. at 3). They are mistaken that "an action to collect money" is necessarily an action at law. An "action to collect money" can take many forms, both

legal and equitable. A suit on a guaranty seeks to collect money via a breach of contract claim; a recognized action at law. *Sterling Dev. Co. v. Collins*, 309 S.C. 237, 240 (1992)(An action for breach of contract is an action at law.). Just because a foreclosure complaint seeks to collect money does not alter its equitable nature. More importantly, neither *Crafton* nor *Harley* was a foreclosure action. Rather, those cases were suits on guaranties wherein Plaintiffs sought relief through a breach of contract action whereas BLC seeks relief via equitable means. Therefore, neither *Crafton* nor *Harley* are applicable or consequential under the circumstances.

Furthermore, the fact that any relief sought by or available to the Appellants in this case is equitable further supports nonjury treatment of this matter. The Answer does not contain any counterclaims or prayer for monetary relief. It merely sets forth a general denial and pleadings labeled as “defenses” entitled lack of standing, accounting, reservation of affirmative defenses, and non-waiver; none of which entitle Appellants to a jury trial as a matter of right. (Ans. at 4-5); *Collier*, 244 S.C. at 371(“Where, in actions of foreclosure, defendant sets up a defense and/or counterclaim affecting the consideration, and arising out of the transaction in which the mortgage or lien was created, the authorities hold that the issues thus raised are equitable and are to be tried by the court upon its equity side.”); *Mortgage Electric Sys. v. White*, 384 S.C. 606, 682 S.E.2d 498 (Ct. App. 2009)(Mortgagors were not entitled to a jury trial on compulsory counterclaim for fraud that they filed against the assignee of the mortgagee in a foreclosure action, as the primary relief sought was to have the mortgage declared void and such relief was equitable.). Because the only remedies sought or available for Appellants’ are equitable they do not have a right to a jury trial. *See Brown v.*

Greenwood Sch. Dist. 50 Bd. of Trs., 344 S.C. at 525 (“There is no right to a jury trial for equitable remedies such as recession and restitution.”).

Given the purely equitable nature of this action, and the absence of any additional and separate legal causes of action or compulsory legal counterclaims, Appellants are not entitled to a trial by jury as a matter of right thereby making it impossible for the Order of Reference to affect this substantial right.

B. The Order of Reference Does Not In Effect Determine the Action

The Order of Reference does not determine this action. It merely referred the matter to the Master for adjudication. It made no findings of law or fact that in any way determine the foreclosure action. The Order of Reference fulfills and represents an administrative function. Indeed, if Appellants are successful in defending the case on the merits, the Court of Appeals will never need to address the propriety of the Order of Reference, or any other interlocutory order in the case with which Appellants may disagree.

C. The Order of Reference Does Not Prevent a Judgment from Which an Appeal Might Be Taken or Discontinue the Action

As with appeals from interlocutory orders generally, Appellants have an adequate opportunity to raise any claim of error related to the Order of Reference after the case proceeds to final judgment. The Order simply is not “one of those rare orders which, in effect, could determine the action and prevent a judgment from which an appeal might be taken.” *Hagood*, 362 S.C. at 197-98, 607 S.E.2d at 710.

If Appellants believe that having the Master hear this matter is an error, *and* if they lose the case, Appellants have the same remedy available as any other party who loses a case at trial: They can appeal from the final judgment and attempt to persuade

this Court that the denial of a trial by jury was harmful error, the remedy for which would be a new trial. There is simply no justification for a piecemeal appeal in this case.

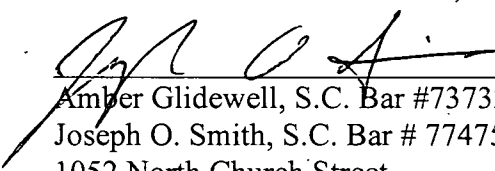
In sum, the singular cause of action alleged in this case is one for foreclosure of real property, through which BLC seeks equitable remedies. The Answer is devoid of any legal compulsory counterclaims or pleas for non-equitable relief. Therefore, the Order of Reference does not deprive Appellants of the right to a jury trial as they never possessed such a right under the circumstances. Lacking entitlement to a jury trial as a matter of right, Appellants cannot be deprived of it by the Order of Reference. That Order, being interlocutory in nature, may only be heard if it falls within one of the narrow exceptions to the final judgment rule under Section 14-3-330(2), which it does not. Therefore, the Order of Reference is not immediately appealable and should be dismissed due to this Court's lack of appellate jurisdiction over the matter.

CONCLUSION

Pursuant to Section 14-3-330 and well-established South Carolina precedent, the Order of Reference is neither a final judgment nor an immediately appealable interlocutory order. The Order of Reference is interlocutory and does not: (i) affect a substantial right; (ii) in effect determine the action; or (iii) prevent a judgment from which an appeal might be taken or discontinue the action. The Order thus satisfies none of the three criteria that must be satisfied in order to vest this Court with jurisdiction over an interlocutory appeal. Accordingly, this Court does not have jurisdiction over Appellants' improper, interlocutory appeal, and the Court should dismiss the appeal for lack of jurisdiction.

Respectfully submitted this 9th day of May, 2014.

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**THE STATE OF SOUTH CAROLINA
In The Court Of Appeals**

**APPEAL FROM KERSHAW COUNTY
Court of Common Pleas**

Joyce McDonald, Clerk of Court

Case No. 2013-CP-28-0601

Business Loan Center, LLC.....Respondent.

v.

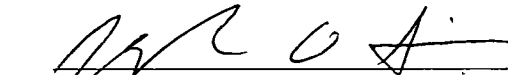
Subham Hospitality, Inc. d/b/a Knights Inn a/k/a Deluxe Inn,
Sudhir T. Mehta and Bhariben Mehta.....Appellants.

ATTACHMENTS

Respondent includes the following documents not included in Appellants' Designation of
Matters to be included in the record on appeal:

1. Amended Complaint
2. March 25, 2014 Letter Glidewell to French
3. Proposed Order Vacating Order of Reference

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Attorneys for Respondents

May 9, 2014
Greenville, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF KERSHAW)
)
 Business Loan Center, LLC,)
)
)
 Plaintiff,)
)
 vs.)
)
 Subham Hospitality, Inc. d/b/a Knights Inn,)
 a/k/a Deluxe Inn; Sudhir T. Mehta; and)
 Bhartiben Mehta,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS

**AMENDED
 FORECLOSURE COMPLAINT
 (Deficiency Sought)
 Non-Jury Proceeding
 Non-Eligible Under HMP
 Foreclosure Intervention
 Inapplicable**

C.A. NO.: 2013-CP-28-060

FILED FOR RECORD
 2013 AUG 28 AM 11:28
 JOYCE McDONALD
 CLERK OF COURT
 KERSHAW COUNTY, S.C.

The Plaintiff, Business Loan Center, LLC (hereinafter "Bank"), complaining of the above-named Defendant(s), would respectfully show unto the Court that:

1. Bank is an organization organized and existing under the laws of one of the states of the United States of America and doing business in the County of Kershaw, State of South Carolina.
2. This is an action to foreclose a mortgage covering real estate situated in the County of Kershaw, State of South Carolina.
3. Upon information and belief, Defendant Subham Hospitality, Inc., d/b/a Knights, Inn, a/k/a Deluxe Inn, is a corporation organized and existing under the laws of the State of South Carolina and doing business in the County of Kershaw (hereinafter "Debtor").
4. Upon information and belief, Defendant Sudhir T. Mehta is a citizen and resident of the State of South Carolina.
5. Upon information and belief, Defendant Bhartiben Mehta is a citizen and resident of the State of South Carolina.

ATTEST True, Correct & Certified
 Copy of Original on File in this
 Court.
Joyce McDonald
 Clerk of Court Kershaw County

7. Defendants Sudhir T. Mehta and Bhartiben Mehta are hereinafter at times collectively referred to as "Guarantors."

10. The remaining Defendants, if any, are named herein because they may assert an interest in the subject property, said interest being subordinate to that of the Plaintiff.

11. The real property hereinafter described, which is the subject of this foreclosure action, is situated and located in the County of Kershaw, State of South Carolina.

12. This Court therefore has proper jurisdiction over the subject matter of and the parties to this action.

13. Any Defendant(s) described herein as a judgment creditor has, by filing judgment(s), designated the attorney(s) entering the judgment(s) as their agent for service of process pursuant to the provisions of § 15-35-840 of the South Carolina Code of Laws (1976 as amended).

14. The Loan, Note, and Mortgage which are the subject of this foreclosure action are not owned or guaranteed by Fannie Mae or Freddie Mac and are not owned, guaranteed, or managed by a servicer who has signed an agreement to participate in the Home Affordable Modification Program, and involve commercial property, and therefore are not subject to modification under the Homeowner Affordability and Stability Plan, the Home Affordable Modification Program, and/or the United States Treasury Supplemental Directive 09-01 (collectively referred to hereafter as "HMP").

15. The Loan, Note, and Mortgage giving rise to this foreclosure action are not subject to any stay or right of modification under S.C. Supreme Court Order No. 2011-05-02-01.

16. Plaintiff's Certification of Exemption from Administrative Order No. 2011-05-02-01 and Affidavit and Notice Regarding Inapplicability of HMP and Foreclosure Intervention

Pursuant to S.C. Supreme Court Order No. 2009-05-22-01 and Order No. 2011-05-02-01, verifying that the loan involved herein is not subject to modification and that the property involved herein is not owner occupied as defined in the Order, are attached hereto, marked "Exhibit A" and "Exhibit B," and incorporated herein by reference, the same as if fully set forth in this Complaint.

17. Plaintiff is entitled to proceed with this foreclosure action.

18. For value received, Debtors executed and delivered an Adjustable Rate Promissory Note (hereinafter "Note") to AMRESKO Independence Funding, Inc. (hereinafter "AMRESKO"), dated September 4, 2002, containing a promise to pay the principal sum of Seven Hundred Eighty-Eight Thousand and 00/100 Dollars (\$788,000.00), together with interest thereon upon such terms as are contained in said Note, a copy of which is attached hereto, marked "Exhibit C," and incorporated herein by reference, the same as if fully set forth in this Complaint.

19. In order to secure the payment of said Note, and all renewals, extensions, substitutions, and/or modifications thereof, and/or any future advances, Debtor executed and delivered to AMRESKO Independence Funding, Inc., a mortgage of even date and identical amount ("Mortgage"), whereby there was conveyed unto AMRESKO by way of said Mortgage the property described as follows:

All that certain piece, parcel, or tract of land, containing 2.03 acres, more or less, together with the improvements thereon, situate, lying and being in the County of Kershaw, State of South Carolina, the same being shown and designated on a plat prepared for Narayan R. Shenoy by Cox and Dinkins, Inc., dated July 30, 1985, recorded in the Office of the R.O.D. for Kershaw County in Plat Book 37 at page 1412; and being more particularly shown on a plat prepared for Subham Hospitality, Inc. & Amresco Independence Funding, Inc. by Inman Land Surveying Company, Inc., dated July 17, 2002, recorded in Plat Book B64, at page 4, said property having such metes, bounds and measurements as are shown

on the latter-referenced plat, which is incorporated herein and made a part hereof, all measurements shown thereon being a little more or less.

TMS: C285-09-00-053

This being the same property conveyed to Ameer Corp. by deed of Ramesh Patel and Dhani Patel dated December 2, 1994, recorded December 20, 1994, in the Office of the R.O.D for Kershaw County in Book 311, page 145. Being the same conveyed to Subham Hospitality LLC by deed of Ameer Corp dated September 4, 2002 and recorded on September 5, 2002 in Record Book 1213 page 265.

Common Address: 322 DeKalb Street, Camden, SC 29020

(Hereinafter the "Property")

20. Said Mortgage was recorded in Book 1213 at Page 268 on September 5, 2002, in the Office of the Register of Deeds for Kershaw County. A copy of the aforementioned Mortgage is attached to and made a part of this Complaint as "Exhibit D" and incorporated herein by reference, the same as if fully set forth in this Complaint.

21. Subsequent to the execution and recordation of the Mortgage, Debtor conveyed to the City of Camden, and Business Loan Center, LLC released, the following property from the Mortgage:

ALL that lot, piece, parcel or tract of land, with buildings and improvements thereon, composed of approximately 0.02 acres, lying and being located in the City of Camden, County of Kershaw, State of South Carolina, being bounded on the WEST and NORTH by property of the Grantor, Subham Hospitality, Inc.; EAST by property now or formerly of S.H.&G. Building, LLC; and on the SOUTH by Roscoe Avenue.

The said tract being more particularly described according to a plat of survey prepared for the City of Camden by William E. Lindler, Jr. P.L.S., on December 22, 2010, which plat is recorded in Plat Book C98 at page 1-B, in the office of the ROD for Kershaw County, and which is by reference incorporated herein as part of this description.

22. In order to further secure payment of said Note, Debtor executed and delivered to BLX Capital, LLC n/k/a Ciena Capital Funding, LLC an Assignment of Leases and Rents dated September 4, 2002, and recorded in Book 1213 at Page 297 on September 5, 2002, in the

Register of Deeds Office for Kershaw County, a copy of which is attached to and made a part of this Complaint as "Exhibit E" and incorporated herein by reference, the same as if fully set forth in this Complaint.

23. In order to further secure payment of said Note, Debtors executed and delivered to AMRESKO a Security Agreement dated September 4, 2002 (attached hereto as "Exhibit F").

24. A UCC-1 Financing Statement in favor of AMRESKO, as Secured Party and Subham Hospitality, Inc. as Debtor, was recorded on September 23, 2002 in Book 1221 at Page 133 in the Office of the Register of Deeds for Kershaw County (which was later assigned to Business Loan Center, Inc. in Book 1306 at Page 140) and continued on July 18, 2007 in Book 2206, at Page 212 in the Office of the Register of Deeds for Kershaw County, and filed with Secretary of State' Office as filing number 30591-43146. Copies of said Security Agreement and UCC filings are attached hereto as "Exhibit G" and incorporated herein by reference, the same as if fully set forth in this Complaint.

25. In order to further secure the payment of said Note, including all extensions, renewals, and modifications thereto, and induce AMRESKO to lend the monies referenced above, Sudhir T. Mehta and Bhartiben Mehta executed and delivered to AMRESKO their Guaranties in writing, dated September 4, 2002, copies of which are attached to and made a part of this Complaint as "Exhibit H," and "Exhibit I," and incorporated herein by reference, the same as if fully set forth in this Complaint.

26. On or about January 31, 2003, said Note, Mortgage, Assignment of Leases and Rents, Security Agreement (and Assignment of Rights), UCC Filings and Guaranties were assigned by Amresko Independence Funding, LLC to Business Loan Center, Inc. See Assignment of Mortgage and Other Loan Documents recorded in Book 1329 at Page 94 on April

10, 2003, in the Office of the Register of Deeds for Kershaw County, a copy of which is attached to and made a part of this Complaint as "Exhibit J" and incorporated herein by reference, the same as if fully set forth in this Complaint.

27. On or about June 14, 2013, said Note, Mortgage, Security Agreement (and Assignment of Rights), and Guaranties were assigned by Business Loan Center, LLC (f/k/a Business Loan Center, Inc.) to BLX Funding Trust I. See Assignment of Mortgage recorded in Book 3115, at Page 231 on July 2, 2013, in the Office of the Register of Deeds for Kershaw County, a copy of which is attached to and made a part of this Complaint as "Exhibit K" and incorporated herein by reference, the same as if fully set forth in this Complaint.

28. On or about June 14, 2013, said Note, Mortgage, Security Agreement (and Assignment of Rights), and Guaranties were assigned by BLX Funding Trust I to HSBC Bank USA, National Association, as Successor trustee to Bank of America, N.A, Successor by merger to LaSalle Bank National Association, as Indenture Trustee under that certain Indenture dated as of October 1, 2003, as the same may be amended from time to time, for the benefit of the SBA and the holders of the Business Loan Express SBA Loan-Backed Notes, Series 2003-2, as their interests may appear subject to the Multi-Party Agreement dated October 1, 2003. See Assignment of Mortgage recorded in Book 3115 at Page 234 on July 2, 2013, in the Office of the Register of Deeds for Kershaw County, a copy of which is attached to and made a part of this Complaint as "Exhibit L" and incorporated herein by reference, the same as if fully set forth in this Complaint.

29. On or about June 14, 2013, said Note, Mortgage, Security Agreement (and Assignment of Rights), and Guaranties were assigned by HSBC Bank USA, National Association, as Successor trustee to Bank of America, N.A, Successor by merger to LaSalle

Bank National Association, as Indenture Trustee under that certain Indenture dated as of October 1, 2003, as the same may be amended from time to time, for the benefit of the SBA and the holders of the Business Loan Express SBA Loan-Backed Notes, Series 2003-2, as their interests may appear subject to the Multi-Party Agreement dated October 1, 2003 to Business Loan Center, LLC. See Assignment of Mortgage recorded in Book 3115 at Page 237 on July 2, 2013, in the Office of the Register of Deeds for Kershaw County, a copy of which is attached to and made a part of this Complaint as "Exhibit M" and incorporated herein by reference, the same as if fully set forth in this Complaint.

30. The terms of said Note, and the Mortgage securing same, provided, among other things, that on failure to pay any installment of either principal or interest, or any portion thereof, when due or on failure to comply with any of the conditions and requirements in said documents, then the whole principal sum and accrued interest shall, at the option of the legal holder thereof, become immediately due and payable and collectable by foreclosure. The makers of said documents further agreed to pay attorney's fees in the event said Note should be collected or foreclosed by an attorney.

31. Bank is the owner and holder of said Note, Mortgage, Assignment of Leases and Rents, Security Agreement (and Assignment of Rights), UCC Filings and Guaranties.

32. Subham Hospitality, LLC is the record owner of the subject real property.

33. Bank's Mortgage constitutes a first lien upon the subject property. The subject mortgage loan account is presently in arrears. Bank, under the terms of the subject Note and Mortgage, has and hereby does declare the entire outstanding indebtedness to be immediately due and payable. Neither demand for payment nor "Notice of Right to Cure" is required by said loan documents or the Code of Laws of South Carolina, 1976, as amended. There is now due

and owing on said Note, Mortgage, Assignment of Leases and Rents, Security Agreement (and Assignment of Rights), and Guaranties, the sum of Six Hundred Seventy-Nine Thousand Six Hundred Fifty-Nine and 35/100 Dollars (\$679,659.35) with interest from June 13, 2013, at the rate set out in the subject Note, together with all costs and expenses of this action and attorney's fees, said Note, Mortgage, Assignment of Leases and Rents, Security Agreement and Guaranties having been placed in the hands of Roe Cassidy Coates & Price, P.A. for collection.

34. Bank alleges that it is entitled to have its Mortgage foreclosed, the premises/property sold, any equity of redemption barred, and the proceeds applied toward the payment of its debt.

35. Bank alleges that it is further entitled to have its Security Agreement (and Assignment of Rights) foreclosed and all furniture, furnishings, fixtures, machinery, equipment, and other personal property located at the Property sold, any equity of redemption barred, and the proceeds applied toward the payment of its debt.

36. Bank is informed, believes, and alleges that it is entitled to a deficiency judgment against Debtor and Guarantors for any deficiency owing after application of the proceeds from the sale of the mortgaged premises and does hereby ask for a personal or deficiency judgment in the event that the proceeds of sale or value of the property acquired by Bank at sale are not adequate to satisfy the indebtedness due Bank under the terms of the subject Note, Mortgage, Assignment of Leases and Rents, Security Agreement (and Assignment of Rights), and Guaranties.

37. Under the provisions of South Carolina Code §29-3-100, effective June 16, 1993, any collateral assignment of rents contained in the Mortgage or an Assignment of Rents and

Leases is perfected and Bank hereby gives notice that all rents shall be payable directly to it by delivery to its undersigned attorneys from the date of default.

38. This Summons and Complaint is an attempt to collect the debt and any information obtained will be used for that purpose.

39. Bank hereby reserves all of its rights, under the law, at equity, and pursuant to the loan documents, in and to all collateral not being foreclosed herein.

WHEREFORE, Plaintiff prays:

- (1) That Bank's Mortgage be declared a first lien upon the subject property;
- (2) That it have judgment against the mortgaged premises for the sum of Six Hundred Seventy-Nine Thousand Six Hundred Fifty-Nine and 35/100 Dollars (\$679,659.35) with interest from June 13, 2013, at the rate set forth in the subject Note; together with attorney's fees, necessary payment of taxes, insurance, and/or advancements; and for the cost of this action;
- (3) That the mortgaged premises be sold, any equity of redemption barred, and that Plaintiff be granted a deficiency judgment against Debtors and Guarantors for any deficiency remaining after the application of the proceeds of sale to the amount of judgment; and
- (4) For such other and further relief as the Court deems just and proper.



Amber B. Glidewell, ID No. 73732

aglidewell@roecassidy.com

Roe Cassidy Coates & Price, P.A.

Attorneys for Plaintiff

Post Office Box 10529

Greenville, S.C. 29603

(864) 349-2600

Greenville, South Carolina

Date: August 27, 2013



Roe Cassidy
Coates & Price PA

AMBER B. GLIDEWELL
DIRECT DIAL: 864.349.2620
EMAIL: AGLIDEWELL@ROECASSIDY.COM

March 25, 2014

Shawn M. French, Esquire
1476 Ben Sawyer Blvd., Ste. 3
Mt. Pleasant, SC 29464

RE: Business Loan Center, LLC v. Subham Hospitality, Inc. et al.

Dear Shawn:

I am in receipt of your initial brief on behalf of the appellants with regards to the above referenced matter today. My client will voluntarily vacate the Order of Reference in this matter in the event you are willing to withdraw your appeal. Please find enclosed a Consent Order Vacating the Order of Reference. Please either advise me of your position and/or execute the enclosed Consent Order. In the event I do not receive a response by March 31st, I intend to file a Motion to Dismiss the Appeal.

I look forward to hearing from you. If you have any questions or concerns, please do not hesitate to contact me. With kind personal regards, I am

Sincerely yours,

Roe Cassidy Coates & Price, P.A.

Amber B. Glidewell

1052 North Church Street
Greenville SC 29601

PO Box 10529
Greenville SC 29603

p 864 349 2600
f 864 349 0303

STATE OF SOUTH CAROLINA)
)
COUNTY OF KERSHAW)

IN THE COURT OF COMMON PLEAS

Business Loan Center, LLC,)
)
Plaintiff,)

**CONSENT
ORDER VACATING ORDER
OF REFERENCE**

-vs-)

Subham Hospitality, Inc. d/b/a Knights Inn,)
a/k/a Deluxe Inn; Sudhir T. Mehta; and)
Bhartiben Mehta,)
)
)
Defendants.)

C.A. NO.: 2013-CP-28-0601

IT APPEARS from the pleadings that this is an action commenced by Plaintiff for foreclosure and suit on guaranty agreements in Kershaw County, South Carolina. It further appears from Affidavits of Personal Service and/or Acceptances of Service that service was had upon all Defendants.

IT FURTHER APPEARS that the original Order of Reference filed in this matter was filed on January 2, 2014.

NOW, THEREFORE, upon motion of Roe Cassidy Coates & Price, P.A., Attorneys for Plaintiff, with the consent of all Defendants,

IT IS ORDERED that the Order of Reference filed in this matter filed on January 2, 2014, be vacated.

IT IS SO ORDERED.

Judge/Clerk of Court
Fifth Judicial Circuit

Camden, South Carolina

Date: _____

WE SO MOVE:

Amber B. Glidewell, SC Bar No. 73732
aglidewell@roecassidy.com
Roe Cassidy Coates & Price, P.A.
Attorneys for Plaintiff
Post Office Box 10529
Greenville, S.C. 29603
(864) 349-2600

WE CONSENT:

Shawn M. French, SC Bar No. 75007
Shawn@thefrenchlawfirm.com
The French Law Firm
Attorney for Defendants
1476 Ben Sawyer Blvd., Ste 3
Mt Pleasant, SC 29464
(843) 606-6440

**THE STATE OF SOUTH CAROLINA
In The Court Of Appeals
APPEAL FROM KERSHAW COUNTY
Court of Common Pleas**

Joyce McDonald, Clerk of Court

Case No. 2013-CP-28-0601

Business Loan Center, Inc.....Respondent,

v.

Subham Hospitality, Inc. d/b/a
Knights Inn a/k/a Deluxe Inn,
Sudhir T. Mehta and Bhariben
MehtaAppellants.

CERTIFICATE OF SERVICE

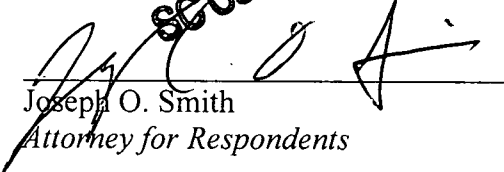
I hereby certify that a true and accurate copy of the foregoing RESPONDENT'S MOTION TO DISMISS AND MEMORANDUM ON APPEALABILITY was served upon the counsel of record listed below by depositing a copy of the same in an official depository of the United States mail in a postage-paid envelope addressed to:

Shawn M. French
1476 Ben Sawyer Boulevard, Ste. 3
Mt. Pleasant, SC 29464

This the 9th day of May, 2014

RECEIVED
MAY 12 2014

SC Court of Appeals


Joseph O. Smith
Attorney for Respondents



Roe Cassidy
Coates & Price PA

Joseph O. "Josh" Smith
(864) 404-3140
jsmith@roecassidy.com

May 9, 2014

Via Federal Express

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

Re: *Business Loan Center, Inc. v. Subham Hospitality, et al*
Case No. 2013-CP-28-0601

Dear Ms. Kitchings:

Please find enclosed for filing the original and seven copies of Respondent Business Loan Center's Motion to Dismiss and Memorandum on Appealability in the above-referenced matter. Kindly file the original motion and memorandum in your usual manner and return a clocked copy of the same to me in the stamped, self-addressed envelope provided herein.

Should you have any questions or require anything further, please do not hesitate to contact me. I thank you in advance for your kind assistance and cooperation.

With highest regards,

Sincerely,

ROE CASSIDY COATES & PRICE, P.A.

Ellen S. Griffin
Paralegal to Joseph O. Smith

Enclosures: (as stated above)

cc: Shawn M. French w enclosures

RECEIVED

MAY 13 2014

SC Court of Appeals

1052 North Church Street
Greenville SC 29601

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p 864 349 2600
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