

STATE OF SOUTH CAROLINA  
COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS  
C/A NO.: 2010-CP-22-1233

First South Bank,

Plaintiff,

vs.

South Causeway, LLC,

Defendant,

**JUDGMENT OF FORECLOSURE  
AND ORDER FOR SALE**

2012 NOV -1 AM 9:15  
CLERK OF COURT

This matter was heard by the Court during the jury term beginning on September 17, 2012. Plaintiff First South Bank ("First South") brought this lawsuit seeking foreclosure of commercial property. Defendant South Causeway, LLC ("South Causeway"), answered the foreclosure lawsuit asserting various defenses and counterclaims. Pursuant to prior order of the Court, South Causeway's counterclaims were heard by a jury. First South's foreclosure action, which is equitable in nature, was to be determined by the Court, with the Court being bound by any findings of fact made by the jury. Johnson v. S.C. Nat. Bank, 292 S.C. 51, 354 S.E.2d 895 (1987). The foreclosure action and counterclaims were presented in one trial. First South presented its case in chief to the court in support of its foreclosure action by offering into evidence through its custodian of records the relevant loan documents, demand letter, and payoff statement.

By verdict rendered on September 25, 2012, the jury found for First South on all three of South Causeway's counterclaims submitted to the jury: (1) breach of contract, (2) violation of the South Carolina Unfair Trade Practices Act, and (3) tortious interference with a contract. Thereafter, as to the First South's foreclosure action, taking into account the jury's findings and considering the testimony and evidence presented, also on September 25, 2012, the undersigned

rendered verdict in favor of First South on First South's foreclosure action, based on the following findings and conclusions of law:

**FINDINGS OF FACT:**

1. The Lis Pendens was filed on August 4, 2010, and the Amended Lis Pendens was filed on August 5, 2010.

2. For value received, South Causeway made, executed and delivered to First South a Universal Note and Security Agreement ("Note") dated June 25, 2008, promising thereby to pay to the order of First South up to the sum of \$6,500,000.00, upon the terms and conditions set forth therein.

3. To secure payment of the Note, South Causeway made, executed and delivered to First South a Mortgage dated June 25, 2008, ("Mortgage") covering real property in Georgetown County. The Mortgage was filed on June 25, 2008, and is of record in the office of the Register of Deeds for Georgetown County in Mortgage Book 990 at Page 247.

4. South Causeway and First South entered into an Agreement (the "Agreement") effective as of April 10, 2009, which, among other things, modified the maturity date of the Note to July 5, 2010.

5. As modified by the terms of the Agreement, the Note matured on July 5, 2010, and payment due on the Note was not made as provided for therein.

6. Based on the terms of the Note and Mortgage, First South is entitled to recover its collection costs, including attorneys' fees and costs.

7. South Causeway asserted various defenses to the foreclosure in its Amended Answer to Complaint and Counterclaims.

#2  
ML

a. With regard to defenses one through fourteen, South Causeway failed to prosecute and/or submit sufficient evidence to establish any of the defenses, and therefore, the undersigned finds in favor of First South for each such defense (as to those defenses actually addressed during the trial, the undersigned refers to the record for further explanation); and

b. With regard to defenses fifteen through twenty-one which were also alleged as counterclaims by South Causeway, during the jury trial, the undersigned directed verdict as to the sixteenth defense (Breach of Contract Accompanied by Fraudulent Act), eighteenth defense (Breach of Fiduciary Duty), nineteenth defense (Fraud, Constructive Fraud, and Misrepresentation), and the twenty-first defense (Tortious Interference with Prospective Contract), with the grounds for such directed verdict being stated on the record. As to the fifteenth defense (Breach of Contract), seventeenth defense (Violation of South Carolina Unfair Trade Practices Act), and twentieth defense (Tortious Interference with Contract), the jury returned a verdict in favor of First South for all three defenses/counterclaims.

8. The amount due and owing on the Note, with interest at the rate provided in the Note and other costs and expenses secured by the Mortgage, is as follows:

a.	Principal due as of September 25, 2012	\$4,774,112.73
b.	Interest through June 11, 2012	\$378,357.74
c.	Interest from June 12, 2012 through September 25, 2012 at per diem rate of \$563.61	\$59,742.66
d.	Late Charges	\$999.99
e.	Appraisal Fee	\$750.00
f.	Advanced Real Property Taxes	\$120,424.45
f.	Copies from Horry County Clerk of Court	\$127.75
	Debt secured by Note and Mortgage, including interest through September 25, 2012	\$5,334,515.32

#3  
TMC

The amount due (shown above) together with First South's collection costs, including attorneys' fees and costs, to be determined by the Court shall accrue interest at the maximum post judgment rate and together with such interest shall constitute the debt due to First South.

9. First South is seeking foreclosure of the Mortgage against South Causeway, and its right to a deficiency judgment against South Causeway is expressly demanded.

**CONCLUSIONS OF LAW**

I, therefore, conclude as follows:

First South 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. South Causeway and all persons whosoever claiming under it 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.

2. As of September 25, 2012, there is due to the First South on the Note and Mortgage the sum of \$5,334,515.32, plus its collection costs, including attorneys' fees and costs to be determined by the Court, plus interest thereafter at the post judgment rate representing the debt due to First South.

3. The amount due in the preceding paragraph shall accrue interest from the date of judgment at the maximum statutory rate per annum and together with such interest shall constitute the total debt due to First South.

#  
4  
MK

4. The amount due shall be subject to increase to permit First South to recover additional costs, commissions and expenses. Such additional costs, commissions and expenses may be established by affidavit and shall be adjudicated by the court without further hearing.

5. South Causeway shall, on or before the date of sale of the property hereinafter described, pay to First South or First South's attorney the amount of South Causeway's debt as aforesaid, together with the costs and disbursements of this action.

6. On default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, as hereinafter set forth, shall be sold by the Georgetown County Clerk of Court at public auction, at the Georgetown County Courthouse, 333 Cleland Street, 2nd Floor Master in Equity Courtroom, Georgetown, County and State aforesaid (or such other place as specified in the Notice of Sale), on some convenient sales day hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event, the sales day shall be on some other day appointed by the Court), on the following terms, that is to say:

A. FOR CASH: The Georgetown County Clerk of Court will require, at the time of the bid, a deposit of five (5%) percent on the amount of the bid in cash or equivalent (unless First South is the successful bidder) same to be applied on the purchase price if compliance is made; but in the event compliance is not made, the deposit may be forfeited without further hearing and applied first to costs of the action and then to South Causeway's debt owed to First South.

B. Interest on the bid shall be paid through the day of compliance at the rate of 7.25%, which is the present maximum post judgment interest rate.

C. The sale shall be subject to taxes and assessments, existing easements and restrictions and easements and restrictions of record, and any other senior encumbrances.

#5  
7/12

D. First South shall pay for any statutory commission on the sale from the proceeds of sale, and purchaser to pay for deed preparation, costs of recording the deed and deed stamps.

7. A personal or deficiency judgment being demanded, the bidding will remain open after the date of sale for thirty (30) days.

8. That the Georgetown County Clerk of Court 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. If, upon such sale being made, the purchaser, or purchasers, should fail to comply with the terms thereof within twenty (20) days after date of sale, then the Georgetown County Clerk of 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.

9. That the Georgetown County Clerk of Court will apply the proceeds of sale as follows:

**FIRST:** To the 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 First South or First South's attorney, of the amount of South Causeway's debt owed to First South and interest (including attorney fees) 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.

10. That First South shall have judgment of foreclosure. That First South shall have judgment against South Causeway for the full amount found to be due First South on the Note and Mortgage, which judgment shall be reduced by the net proceeds of sale pursuant to S.C. Code Ann §29-3-650, as amended, as determined by this Court in a subsequent Order for Deficiency Judgment. First South may waive any of its rights prior to sale, including its right to

#6  
TR

a deficiency judgment in accordance with Rule 71, South Carolina Rules of Civil Procedure. First South's waiver shall be made in writing.

11. If First South is the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses, and the indebtedness owed to First South in full, First South may pay to the Georgetown County Clerk of Court only the amount of the costs and expenses, crediting the balance of the bid on the indebtedness owed to First South.

12. Should the First South, First South's attorney or agent fail to appear on sales day, the property shall not be sold, but shall be re-advertised and sold at some convenient sales day thereafter when the First South, First South's attorney or agent is present.

13. In the event the successful bidder is other than South Causeway, upon the presentation of a Writ of Assistance, the Sheriff of Georgetown 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 or his assigns in such peaceable possession.

14. That the deed of conveyance made pursuant to this sale shall be indexed in the grantor index by the Clerk of Court or Register of Deeds in the name of the owner of record of subject property immediately prior to execution of the deed, as well as in the name of the Clerk of Court for Georgetown County, who executes such deed as grantor.

15. The undersigned, shall direct the Clerk of Court/Register of Deeds to release of record the mortgage lien being foreclosed, after the Order Confirming Sale and Disbursements has been executed and filed, which mortgage lien is described as follows:

#  
7  
TH

That certain Mortgage given by South Causeway to First South dated June 25, 2008 and recorded in the Office of the Clerk of Court/Register of Deeds for Georgetown County on June 25, 2008 in Book 990 at Page 247.

16. The undersigned will retain jurisdiction to do all the necessary acts incident to this foreclosure including, but not limited to, the issuance of a Supplemental Order to evidence additional debt incurred if the sale of the property is delayed by the filing of a bankruptcy petition, transfer of service of the Note and Mortgage by First South, or an attempt of the parties to reach a settlement, the issuance of a Supplemental Order to correct a harmless error in the action that does not substantially affect the rights of the parties, the issuance of a Writ of Assistance, disposing of any surplus funds pursuant to Rule 71(c), SCRCPP, and hearing any issues involving appraisal proceedings under §29-3-680 et seq of the South Carolina Code of Laws (1976) as amended.

17. Mortgaged property to be sold by Georgetown County Clerk of Court:

*All those certain pieces, parcels or tracts of land situate, lying and being in the County of Georgetown, South Carolina, and designated as Parcel A containing 11.66 acres and Parcel B containing 0.91 acres and Parcel C containing 4.92 acres on the plat entitled "Plat of 17.49 acres at the Southeastern intersection of U.S. Highway 17 and the South Causeway to Pawleys Island, Surveyed for Peggy Wheeler-Cribb", said plat prepared by Trico Engineering Consultants, dated October 5, 2005, and recorded in the Office of the Register of Deeds for Georgetown County in Slide 564 at Page 2, all of which will more fully appear by reference to the aforesaid plat which is incorporated herein and made apart and parcel hereof by reference thereto.*

ALSO:

*All right title and interest in and to the easement reserved in Indenture Deed from Ruth Oliver Bell, et al. to C.B. Foster, as Trustee for the RBP Trust dated January 31, 1989, recorded on April 23, 1989 in Deed Book 332 at Page 125.*

ALSO:

*All that certain piece, parcel or tract of land situate, lying and being in Tax District Number Four (4) County of Georgetown, State of South Carolina, shown and designated as 1.68 acres on a map prepared for James N. Lewis by Samuel M. Harper, R.L.S., dated June 4, 1982, recorded in the Office of the Clerk of Court for Georgetown County in Plat Book 2 at Page 30; said parcel measuring and containing 1.68 acres and Butting and Bounding as follows: to the Northeast a distance of 473.1 feet on lands designated "C. W. Stumper"; to the Southeast a distance of 379.9 feet on lands of A.H. Parsons, et al; to the Northwest a distance*

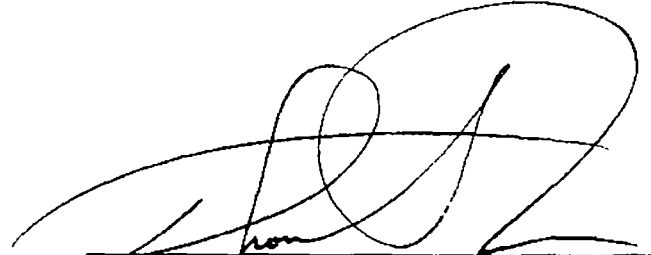
#8  
TH

of 50 feet by U.S. Highway 17; and to the Southwest a distance of 140 feet on lands of A. H. Parsons, et al.; all of which will more fully and at large appear by reference to said map.

*This being the same property conveyed to South Causeway, LLC by Peggy Wheeler-Cribb by deed dated June 25, 2008, recorded in the Office of the Register of Deeds for Georgetown County on June 25, 2008 in Record Book 990 at Page 242.*

18. This is a foreclosure of commercial property and therefore, exempt from (1) the Home Affordable Modification Program ("HMP") program pursuant to Administrative Order of the South Carolina Supreme Court dated May 22, 2009, and (2) the right to foreclosure intervention pursuant to Administrative Order of the Supreme Court of South Carolina dated May 2, 2011.

**AND IT IS SO ORDERED.**



Thomas A. Russo, Presiding Judge

Oct. 12, 2012  
Florence, South Carolina

Attorneys for Plaintiff First South Bank:  
Donald W. Tyler, Jr.  
Tyler, Cassell, Jackson, Peace & Silver, LLC  
1331 Elmwood Avenue, Suite 300  
Post Office Box 11656  
Columbia, South Carolina 29211  
(803) 252-7689

AND

Joel W. Collins, Jr.  
James L. Floyd, III (Lee)  
Collins & Lacy, P.C.  
Post Office Box 12487  
Columbia, South Carolina 29211  
(803) 256-2660

#  
y  
ML