

STATE OF SOUTH CAROLINA

FILED - CLERK'S OFFICE
IN THE COURT OF COMMON PLEAS
ANDERSON ST.

COUNTY OF ANDERSON

2013 MAR 18 P 2:43 Case No.: 2012-CP-04-1819



First Federal Bank fka First Federal Savings & Loan Association of Charleston,
GENERAL SESSIONS

Plaintiff,

v.

**MASTER IN EQUITY'S ORDER AND
JUDGMENT OF FORECLOSURE AND
SALE**

George A. Shira, III and Betsey R. Shira,

Defendants.

I, the undersigned, Master-in-Equity for Anderson County, hereby find that pursuant to the Order of Reference granted in the above entitled case, a hearing was held on October 8, 2012, attended by Ashley V. Myers of Haynsworth Sinkler Boyd, P.A., attorneys for First Federal Bank fka First Federal Savings & Loan Association of Charleston ("Plaintiff") and Daniel L. Draisen, attorney for George A. Shira, III and Betsey R. Shira (collectively, "Defendants Shira"). Susan Hyde testified on behalf of the Plaintiff. Defendant George A. Shira testified on behalf of the Defendants Shira. Based upon a review of the file and from the testimony and evidence presented and introduced into the record at the hearing, I find and conclude as follows:

FINDINGS OF FACT

1. The Lis Pendens was filed on March 23, 2012, the Second Lis Pendens was filed on April 10, 2012, the Third Lis Pendens was filed on April 26, 2012, and the Fourth Lis Pendens was filed on May 2, 2012.

2. The Civil Action Coversheet, Certificate of Exemption from ADR, Certificate of Exemption from Administrative Order 2011-05-02-01, Summons and Complaint with Exhibits (collectively, "Pleadings") were filed on May 2, 2012.

3. As evidenced by the Affidavit of Service items on file with the Court, said Pleadings were served upon Defendants Shira on May 17, 2012.

4. Defendants Shira, by and through their counsel, Daniel L. Draisen, Esq., filed an Answer on or about June 8, 2012.

5. On July 16, 2012, the Mandatory Order of Reference was signed and entered by the Court, wherein the above-entitled case was referred to the Honorable Ellis B. Drew, Jr., Master-in-Equity for Anderson County, for the purpose of taking testimony and making findings of fact and conclusions of law, and to enter a final decree of foreclosure and sale.

6. Upon information and belief, Defendants Shira are not individuals entitled to protection under the Servicemembers Civil Relief Act, 50 U.S.C.S. Appx. §§ 501 *et seq.* (2004).

7. Defendants Shira were served with the Amended Notice of Hearing as evidenced by the Certificate of Service item that is of record herein.

8. For value received, on or about April 22, 2008, Defendants Shira made, executed, and delivered unto Plaintiff an Interest-Only Period Adjustable Rate Note in the original principal amount of Three Hundred Thirty Thousand and 00/100 (\$330,000.00) Dollars ("Note").

9. To secure the repayment of the Note, and the debt evidenced thereby, Defendants Shira made, executed, and delivered unto Plaintiff a certain Mortgage dated April 22, 2008 ("Mortgage"), whereby Defendants Shira mortgaged to Plaintiff the real property described in the Mortgage. The Mortgage was recorded on May 1, 2008, in the Anderson County Register of Deeds Office in Book 8641, at Page 1.

10. The Mortgage constitutes a first priority mortgage lien on the subject property.

11. Plaintiff is the current holder of the Note and the Mortgage.

12. Defendants Shira are the current legal owners of the property secured by the Mortgage.

13. Payments due on the Note and the Mortgage have not been made as provided for therein, and the Plaintiff, as the holder thereof, has elected to require immediate payment of the entire amounts due thereon and has placed the Note and the Mortgage in the hands of the attorney herein for collection.

14. On or about October 3, 2011, Defendants Shira were sent a Consumer Right to Cure Letter by Plaintiff.

15. The amount due and owing on the Note and Mortgage, with interest at the rate provided in the Note, and other costs and expenses of collection, including attorneys' fees, secured by the Note and Mortgage, as of October 8, 2012, are as follows:

Original principal	\$330,000.00	
(a) Principal Balance	\$	329,980.00
(b) Accrued Interest Due	\$	20,548.12
(c) Late Fees	\$	938.34
(d) Mortgage Processing	\$	25.00
(e) Appraisal Fees	\$	<u>500.00</u>
Total amount due on Note and Mortgage	\$	351,991.46
(f) Filing, service, motion, and other fees	\$	723.16
(g) Referral Fee	\$	<u>125.00</u>
Total Balance on Note and Mortgage	\$	352,839.62
(i) Attorneys' Fees	\$	<u>5,192.50</u>
Total debt secured by the Note and Mortgage, including interest to date shown	\$	358,032.12

Interest continues to accrue on the Note at the rate of 5.25% *per annum* (which is currently \$48.12 *per diem*) from October 8, 2012, until judgment and at the Note rate thereafter until paid.

16. Plaintiff is seeking foreclosure of the Mortgage and the right to a personal or deficiency judgment against Defendants George A. Shira, III and Betsey R. Shira, with a credit against the judgment to be given for the net proceeds received by Plaintiff for the sale. However, Plaintiff reserves the right to waive deficiency prior to the sale.

17. The subject mortgage is not a mortgage owned or guaranteed by the Federal National Mortgage Association ("Fannie Mae") or the Federal Home Loan Mortgage Corporation ("Freddie Mac"), and although Plaintiff has agreed to participate in the Home Affordable Modification Program ("HAMP"), this mortgage is not subject to modification.

18. The Mortgage is not subject to the Supreme Court of South Carolina's May 2, 2011, Administrative Order No. 2011-05-02-01 ("Administrative Order") because the real property subject to this matter is not an owner occupied dwelling.

19. The Certificate of Exemption from Administrative Order 2011-05-02-01 was filed on May 2, 2012.

CONCLUSIONS OF LAW

I, therefore, conclude that the Mortgage is not subject to modification under the Home Affordable Modification Program, that the foreclosure is not subject to the Administrative Order, that the Plaintiff should have judgment of foreclosure of the Mortgage and the property subject to this foreclosure action should be ordered sold at public auction after due advertisement, and a personal or deficiency judgment against Defendants George A. Shira, III and Betsey R. Shira, with a credit against the judgment to be given for the net proceeds received by the Plaintiff for the sale, shall be entered upon the judgment rolls for Anderson County. The property subject to



this foreclosure action shall be sold at the foreclosure sale conducted by the Master-in-Equity for Anderson County at the next available sales date.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The subject mortgage is not a mortgage owned or guaranteed by the Federal National Mortgage Association ("Fannie Mae") or the Federal Home Loan Mortgage Corporation ("Freddie Mac"), and although Plaintiff has agreed to participate in the Home Affordable Modification Program ("HAMP"), this mortgage is not subject to modification.
2. The Mortgage is not subject to the Supreme Court of South Carolina's May 2, 2011, Administrative Order No. 2011-05-02-01 ("Administrative Order") because the real property subject to this action is not an owner occupied dwelling.
3. The Certificate of Exemption from Administrative Order 2011-05-02-01 was filed on May 2, 2012.
4. That there is due to the Plaintiff on the Note and the Mortgage set forth in the Complaint the sum \$358,032.12 as of October 8, 2012, and Plaintiff is entitled to judgment for said amount.
5. The amount due in the proceeding paragraph shall constitute the total judgment debt due to the Plaintiff and shall bear interest hereafter until paid on the Note at the rate of 5.25% per annum (which is currently \$48.12 *per diem*) from October 8, 2012, until the entry of judgment and at the Note rate thereafter. Further, to the extent Plaintiff advances money for insurance or other expenses to preserve the property after October 8, 2012, such advances may be added to the total judgment debt.
6. That Defendants George A. Shira, III and Betsey R. Shira are liable for the aforesaid debt, shall on or before the date of sale of the property hereinafter described, may pay to the




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

7. That on default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint and hereafter set forth, be sold by the Anderson Master-in-Equity or his agent, at public auction, at the Anderson County Courthouse, Anderson, South Carolina, County and State aforesaid, 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 the day designated by the selling officer succeeding such holiday), on the following terms, that is to say:

The sale shall be for cash, and the highest bidder shall be required to make a cash deposit of five (5%) percent on the bid as earnest money and as evidence of good faith. If the Plaintiff is the successful bidder at the sale, the Plaintiff may, after paying the costs of the sale, apply the debt due upon its Mortgage against its bid in lieu of cash. Should the person making the highest bid at the sale fail to comply with the terms of his bid by depositing the said five (5%) percent in cash, then the property shall be sold at the risk of such bidder on the same sales date or some subsequent date as the selling officer may find convenient and advantageous. Should the last and highest bidder fail to comply with the terms of his bid within thirty (30) days of the final acceptance of his bid, then the selling officer shall re-advertise and resell the property on the same terms on a subsequent date at the risk of such bidder. Persons submitting additional bids after the initial sale shall deposit five (5%) percent of their bids in cash as prescribed above. The Anderson Master-in-Equity or his designated representative, shall promptly return all deposits except the deposit securing the highest bid. The sale shall be subject to taxes, to existing easements and restrictions, and to homeowners association assessments accruing subsequent to the date of the deed/title issued to the purchaser. Purchaser shall pay all costs of recording the deed.

8. Plaintiff is seeking foreclosure of the Mortgage and does not waive the right to a personal or deficiency judgment against Defendants George A. Shira, III and Betsey R. Shira. However, Plaintiff reserves the right to waive deficiency prior to the sale.



9. That after advertisement according to law, give notice of the time and place of such sale, and the terms thereof, that the Anderson Master-in-Equity convey to the purchaser, or purchasers, a deed to the premises sold; and that the Plaintiff, or any other party to this action, may become a purchaser at such sale, and that if, upon such sale being made, the purchaser or purchasers should fail to comply with the terms thereof, the Court may advertise the said premises of sale on the next, or some other subsequent Sales Day, at the risk of the former highest bidder, and so from time to time thereafter until a compliance shall be secured. The deed will be taken subject to payment by grantee of any taxes or special assessments constituting a lien against the property sold under this Report and hereinafter more fully described. Pursuant to S.C. Code §12-24-40(13), the successful bidder other than Plaintiff shall pay the cost of deed stamps on said deed.

10. That the proceeds of the sale be applied as follows:

FIRST, to payment of the amount of the costs and expenses of this action, including the Master-in-Equity fee and the costs of advertising the Notice of Sale, and any taxable disbursements by the attorneys in the action;

SECOND, to the payment of the 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; and

THIRD, any surplus proceeds to be held subject to further order of this Court.

11. That upon the making of the sale of said mortgaged premises, as hereby ordered, and the execution and delivery to the purchaser of a deed to the premises, the said purchaser or purchasers be let into possession of the premises on production of the deed and a writ of assistance; and the Sheriff of Anderson County shall put the holder of the deed into possession of



the premises. All valid tenant rights pursuant to Protecting Tenants at Foreclosure Act of 2009 shall be protected.

12. That each Defendant named herein and all persons whosoever claiming under him, them or it, be forever barred and foreclosed of all right, title and interest and equity of redemption in the said mortgaged premises so sold, or any part thereof.

13. The undersigned Master-in-Equity will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance and disposing of any surplus funds pursuant to Rule 71(c) SCRPC.

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

ALL those two (2) certain pieces, parcels or lots of land situate, lying and being in Fork Township, Anderson County, South Carolina, being shown and designated as Lot Number Nineteen (19) and Lot Number Twenty (20) of Horseshoe Bay Subdivision prepared by Solar Land Surveying, said plat dated July 20, 1989, and recorded in the Office of the Register of Deeds for Anderson County, South Carolina in Plat Slide 86, at Page 10. The metes and bounds, courses and distances as upon said plat appear, being incorporated herein by reference thereto and being made a part hereof.


This being the same property conveyed unto the Mortgagor(s) herein by deed of George A. Shira, Jr., said deed dated December 13, 1999, and recorded December 13, 1999, in Deed Book 3590, at Page 264, Records of Anderson County, South Carolina.

Property Address: 112 Horseshoe Drive, Townville, SC 29689 (TMS # 018-10-01-119)

108 Horseshoe Drive, Townville, SC 29689 (TMS # 018-10-01-020).

15. If the Plaintiff or the Plaintiff's representative does not appear at the scheduled sale of the above-referenced property, then the sale of the property will be null, void and of no force and effect. In such event, the sale will be rescheduled for the next available sales date.

3-15, 2013


Ellis B. Drew, Jr.
Anderson County Master-in-Equity



FILED - CLERK'S OFFICE
ANDERSON SC
MAR 18 P 2:43
GENERAL SESSIONS
JIMMY FLEAS