

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2009-CP-[REDACTED]

[REDACTED],)
)
Plaintiff,)
)
-vs-)
)
[REDACTED],)
)
Defendant.)
_____)

**ORDER TERMINATING
AGREEMENT FOR DEED**

TO: [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

NOTICE: THIS ORDER PROVIDES A PERIOD OF 30 DAYS AFTER THE SERVICE HEREOF UPON THE DEFENDANT FOR THE DEFENDANT TO REDEEM THE PROPERTY.

Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure (hereinafter "SCRCP"), the above-entitled matter was referred by Order of Reference to the undersigned Master in Equity to make appropriate findings of fact and conclusions of law, with authority to enter a final judgment in the cause. Any appeal from the decision of the Master in Equity shall be directly to the South Carolina Court of Appeals.

Pursuant to the said reference, a hearing was held, attended by the Plaintiff, [REDACTED], and his attorney, and from the evidence presented, I find and conclude as follows:

FINDINGS OF FACT:

1. The Summons and Complaint were filed on October 23, 2009.

2. Service of the Summons and Complaint was made upon the Defendant named in this Report as is shown by the proof of service filed herein.

3. All parties are properly before the Court. The Defendant, [REDACTED], is in default as shown by Affidavit filed herein. By virtue of the failure of the Defendant in default to deny in a responsive pleading the averments of fact properly asserted in the Complaint, the Defendant has admitted such averments.

4. According to an Affidavit filed herein, no Defendant in default is in the military service of the United States of America, as contemplated under the Servicemembers Civil Relief Act.

5. The Defendant was notified of the time, date and place of hearing in this matter. The Defendant, who did not participate in the hearing, has waived the right to do so.

6. On or about April 19, 2007, for value received, [REDACTED] and the Defendant entered into a Contract of Sale and an Agreement for Deed/"Rent to Own" Agreement (collectively the "Agreement"), executed in writing, according to the terms and conditions set out therein, by which the Plaintiff agreed to sell to the Defendant the subject real property, known as [REDACTED].

7. The Agreement was recorded in the Office of the Register of Deeds for Lexington County on January 9, 2009, in Book [REDACTED] at page [REDACTED].

8. The Agreement involves the subject real property, which is described as follows:

All that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being near the [REDACTED], State of South Carolina, and being shown on a plat prepared for [REDACTED], Inc. by [REDACTED], RLS, dated October 11, 1971.

The within property beginning at an iron situate at the southern corner of the subject property, said point of commencement being 355.4 feet from [REDACTED] Road as measured

along a right-of-way running in a northwest direction from [REDACTED] Road along property now or formerly of [REDACTED]; thence N 24E 07' W along said right-of-way for a distance of 270.00 feet to an iron; thence N 37E 29' E along property now or formerly of [REDACTED] for a distance of 138.40 feet to an iron; thence S 27E 11' E along property now or formerly of [REDACTED] for a distance of 340.90 feet to an iron; thence S 67E 46" W for a distance of 140.00 feet to the Point of Commencement.

Included is the 64 foot right-of-way as shown on the aforesaid plat, running from [REDACTED] Road in a northwesterly direction to the within properties.

This being the same property conveyed to [REDACTED] by deed of The Security Title Guarantee Corporation of Baltimore dated April 9, 2007, and recorded in the Office of the Clerk of Court for Lexington County on April 10, 2007, in Book [REDACTED] at page [REDACTED].

TMS: [REDACTED]

[REDACTED] According to the terms and conditions of Agreement, it is provided that the Defendant ("Party of the Second Part") is obligated to make monthly payments to the Plaintiff ("Party of the First Part"), as follows:

...the Party/Parties of the Second Part hereby covenant(s) and agree(s) to pay to the Party/Parties of the First Part the sum of Twenty-Nine Thousand Six Hundred and Sixty-five Dollars and No/cents (\$29,665.00) in the manner as follows: Five Hundred Dollars and No/cents (\$500.00) shall be paid at the signing of this agreement and the remaining Twenty-Nine Thousand One Hundred Sixty-Five Dollars and No/cents (\$29,165.00) shall be paid according to the terms of a "Promissory Note" of even date with interest at the rate of twelve percent (12%) per annum, payable monthly on the whole sum remaining from time to time unpaid; and to pay all taxes, assessments or impositions that may be legally levied or imposed upon said land subsequent to the year of 2007 and to keep the buildings upon said premises insured by some company satisfactory to the Party of the First Part, and payable to the parties, respectively as their interest may appear, in the sum not less than Thirty Thousand Dollars and No/cents (\$30,000.00) during the term of this agreement.

10. The Promissory Note ("Note"), which was executed by the Defendant on April 19, 2007, provides, in relevant part, that the Defendant was to pay monthly installments of

"...Three Hundred Dollars and No/cents (\$300.00) each payment beginning the 1st day of each month beginning on May 2007...."

11. The said [REDACTED]. assigned the Agreement unto American Equity Funding, Inc. by Assignment dated October 9, 2007, and recorded in the Office of the Register of Deeds for Lexington County on November 6, 2007, in Book [REDACTED] at page [REDACTED].

12. The said [REDACTED] conveyed the subject property to American Equity Funding, Inc. by Deed dated October 9, 2007, which was recorded in the Office of the Register of Deeds for Lexington County on November 6, 2007, in Book [REDACTED] at page [REDACTED].

13. The Plaintiff is the owner, in fee simple, of the subject real property, which is subject to the Agreement.

14. The Agreement further provides, in relevant part, as follows:

...in case of failure of the Party/Parties of the Second Part to make any of the payments or any part thereof, or to perform any of the covenants hereby made and entered into by Party/Parties of the Second Part, this contract, at the option of the Party/Parties of the First Part be forfeited and terminated, and the Party/Parties of the Second Part shall forfeit all payments made by him/her/them on this contract; and such payments shall be retained by the Party/Parties of the First Part in full satisfaction and liquidation of all damages sustained by them, and the premises aforesaid without being liable to any action therefor...Conversion to "Month to Month" tenancy; upon the Party/Parties of the First Part exercising his/her right of termination as provided herein, all rights and interests hereby created and then existing in the Party/parties of the Second Part and in all claiming Lender the Party/Parties of the Second Part, shall holy cease and terminate, and the Party/Parties of the Second Part shall be deemed a "month to month" tenant. The Party/Parties of the Second Part, now known as "Tenant," agrees to surrender the said property to the Party/Parties of the First Part without demand, peaceful possession of said property in as good condition as it is now...All moneys paid by the Party/Parties of the Second Part and all improvements constructed in or upon the said property shall be retained by the Party/Parties of the First Part as compensation for the use and occupancy thereof by the Party/Parties of the Second Part, consideration for the execution of this Agreement and liquidation damages to the Party/Parties of the First Party for such default. The provisions made for forfeiture herein are an attempt to estimate the actual damages to the Party/Parties of the First Part in the event of default by the Party/Parties of the Second Part, and both Parties hereto agree that these forfeitures are reasonable and are not intended as a penalty. The Party/Parties of the Second Part acknowledges that upon termination of this agreement by the Party/Parties of the

first part and Party/Parties of the Second Part becomes a "month to month" tenant with a monthly rent equal to Three Hundred Dollars and No/cents (\$300.00). It is mutually agreed, by and between the Parties hereto; that the time of each payment is essential part of this contract and that all covenants and agreements herein contained shall extend to and be obligatory upon the heirs, executors, administrators and assigns of respective parties.

15. The payments due on the Agreement and Note are due for October 1, 2008, and subsequent months.

16. The Defendant has not tendered a payment as required by the Agreement and the Note since May 1, 2009.

17. A Notice of Consumer's Right to Cure was mailed to the Defendant on August 17, 2009, and the Defendant has failed to make a satisfactory response thereto.

18. The Defendant has failed and refused to comply with the terms and conditions of the Agreement and has not responded to the Plaintiff's right-to-cure letter or made any contact with the Plaintiff's attorney since being served with the Summons and Complaint.

19. I find and conclude that payment due according to the terms and conditions of the Agreement was not made as provided for therein, that the Defendant failed to respond to the Plaintiff's demands, and that the Plaintiff has elected to terminate the Agreement and has taken all necessary steps as a prerequisite to the termination of the Agreement for cause.

20. Counsel for Plaintiff filed an affidavit as to attorney's fees and costs in this case, which was not contested, and therefore, I find as fact herein. Having specifically considered each of the following: the nature, extent and difficulty of the services rendered; the time and labor devoted to the case, including reviewing the various loan documents, performing the title search, preparing, filing and serving the pleadings, preparing for the hearing, including preparing the judgment and other documents requested by the Court, attending the hearing, preparing for and attending the sale, and preparing any post-sale documents requested by the Court; the professional standing of the Plaintiff's attorney; the fee customarily charged in this jurisdiction

for similar services; and the beneficial results obtained for the Plaintiff, I find that the sum of \$3,500.00 is a reasonable attorney's fee for the Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of the within action, under the terms of the Agreement and Note. Services anticipated to be performed until final adjudication contemplates completion of this matter within a reasonable time and does not include exceptional, unanticipated circumstances delaying conclusion beyond the normal time.

21. Through the introduction of testimony and exhibits at the hearing, the Plaintiff has established, by the preponderance of the evidence, the amounts of the separate debts due and owing on the Note and the Agreement, and I find that the Total Debt, including the principal, interest at the rate provided in the Note, advancements and the costs and expenses of collection, is as follows:

(a)	Principal Balance	\$28,845.99
(b)	Partial Unpaid Interest from September 1, 2008, to October 1, 2008, at 12.00% per annum	\$ 116.01
(c)	Interest from October 1, 2008, to January 21, 2010, at 12.00% per annum	\$ 4,326.90
(d)	Property Insurance	\$ 258.15
(e)	NSF Charge	\$ 30.00
(f)	Costs of collection prior to hearing	\$ 496.22
(g)	Attorney's Fee (paragraph 19, <u>supra</u>)	<u>\$ 3,500.00</u>

Total Debt secured by the Agreement and Note, including interest to date shown	\$37,573.27
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Interest for the period from the date shown in (c) above through the date of this judgment, at above stated rate, to be added to the above stated "Total Debt" to comprise the amount of the judgment debt entered herein, and interest after the date of this judgment at the rate of 12.00% per annum, pursuant to the terms of the Agreement and Note, on the judgment debt should be

added to the judgment debt to comprise the amount of the Plaintiff's debt secured by the Agreement and Note through the date to which such interest is computed.

22. I have considered the factors set forth in the Supreme Court decision in the case of Lewis v. Premium Investment Corporation, 351 S.C. 167, 568 S.E.2d 361 (2002), and the Court of Appeals decision in the case of Cody Discount, Inc. vs. Merritt, 368 S.C.570, 629 S.E.2d 697 (2006), and I find and conclude as follows:

a. Defaults and Forfeiture. Since the inception of the Agreement, the Plaintiff has received from the Defendant the sum of only \$3,618.00 and that this amount, in the 33 months since the inception of the Agreement, equates to a monthly amount of only \$109.64.

b. Equity. In light of the minimal investment paid by the Defendant when compared to her having exclusive possession of the premises for 33 months, the Defendant has, through her payments, acquired no equity in the premises.

23. At the request of the Court, the Plaintiff has offered into evidence information on the value of the property, including a 2007 appraisal, which indicates that the property is worth \$64,000.00, and a Lexington County statement that the 2009 tax assessed value of the property is \$45,630.00; and from the information provided, it appears that the property has or may have a fair market value significantly higher than the debt due to the Plaintiff.

24. I find and conclude that, as there may be significant equity value in the property, the Defendant should be afforded a limited opportunity to redeem the property.

25. I therefore find and conclude that the Plaintiff is entitled to an Order terminating the Agreement under the strict forfeiture provision of the Agreement, which I specifically find and conclude does not constitute a penalty, but that the Defendant should have a period of 30 days after being served with a copy of this Order to redeem the property by paying to the Plaintiff the entire debt (see Paragraph 21, supra).

26. I further find and conclude that, should the Defendant fail to redeem the property within said period, the Agreement shall be automatically terminated without further Order of the Court.

27. I further find and conclude that, effective with the termination of the Agreement as a consequence of the Defendant's failure to timely redeem the property, the Plaintiff is entitled to quiet possession of the premises and that the Sheriff for Lexington County should, if requested, put and keep the Plaintiff in possession.

It is, therefore, ORDERED, ADJUDGED AND DECREED:

1. That the Plaintiff's debt is \$37,573.27, plus interest after January 21, 2010, at the rate of 12.00% per annum, plus the costs of service of this Order as required herein.

2. That the Defendant shall pay the Plaintiff's aforesaid debt within thirty (30) days after being served with a copy of this Order.

3. That should the Defendant fail to redeem the property by paying timely the Plaintiff's debt, the Contract of Sale and Agreement for Deed/"Rent to Own" Agreement be and they are hereby forever terminated, and they shall be considered null and void.

4. That if requested, the Sheriff for Lexington County shall put and keep the Plaintiff in possession of the subject premises, and that should the Defendant or other occupant remain in possession of the premises, the Sheriff of Lexington County, or his deputy, shall execute upon this Order Terminating Agreement for Deed and shall proceed to the premises, present to the Defendant, or to any other occupant of said premises, a copy of this Order Terminating Agreement for Deed and notify the occupant(s) of their deadline to vacate the premises voluntarily. If the premises appears to be occupied and the occupant(s) do not respond, the Sheriff, or his deputy, shall leave a copy of this Order Terminating Agreement for Deed taped or stapled at each corner and attached at the top of either the front or back door or in

the most conspicuous place. If the occupant(s) refuse to vacate by said deadline or if the premises appears to be unoccupied, the Sheriff, or his deputy, shall announce his identity and purpose, and, if necessary, enter the premises by force, using the least destructive means possible, in order to effectuate the ejection.

AND IT IS SO ORDERED.

James O. Spence
Master in Equity for Lexington County

Lexington, South Carolina

_____, 2010