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Shelby Cnty Judge of Probate,AL
04/08/2003 13:31:00 FILED/CERTIFIED

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ALABAMA JUDICIAL DATA CENTER
JEFFERSON COUNTY
CERTIFICATE OF JUDGEMENT

CV 1999 003819.00
HOUSTON BROWN

IN THE CIRCUIT COURT OF JEFFERSON COUNTY

SAMUEL N STOTT ET AL VS JOHN S ROBERTS JR ET AL

DEFENDANT

COMPTON M JASON
% COMPTON ENTERPRISES
2728 4TH AVENUE SOUTH
BHAM ,AL 35233-0000

PARTY'S ATTORNEY:

NAVE DICK D
SUITE 204
300 CENTURY PARK SOUTH
BIRMINGHAM ,AL 35226

I, ANNE-MARIE ADAMS , CLERK OF THE ABOVE NAMED COURT HEREBY CERTIFY THAT ON 03/10/2003 PLAINTIFF, STOTT SAMUEL N PARTNE RECOVERED OF DEFENDANT IN SAID COURT A JUDGEMENT WITHOUT WAIVER OF EXEMPTIONS FOR THE SUM OF $450,977.63 DOLLARS PLUS $194.00 DOLLARS COURT COSTS, AND THAT THE PLAINTIFF'S ATTORNEY(S) OF RECORD WAS: CORRETTI DOUGLAS P

03/10/2003 JUDGMENT RENDERED IN FAVOR OF THE PLAINTIFF AND AGAINST THE DEFENDANT. ORDER PER SEPARATE PAPER, SEE ATTACHED.

JUDGE BROWN

GIVEN UNDER MY HAND THIS DATE 03/26/2003

Anne-Marie Adams

CLERK:ANNE-MARIE ADAMS
RM 400 JEFF CO COURTHOUSE
BIRMINGHAM AL 35203
(205)325-5355

OPERATOR: EDH
PREPARED: 03/26/2003

PLAINTIFF'S ATTORNEY:

CORRETTI DOUGLAS P
1804 7TH AVENUE NORTH

BIRMINGHAM AL 35203

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

S & S BUILDERS & ASSOCIATES, et al.,

Plaintiffs,

vs.

JOHN S. ROBERTS, JR., et al.,

Defendants.

CASE NO. CV-99-03819

FILED IN OFFICE
MAR 10 2003
ANNE-MARIE ADAMS
Clerk

FILED IN OPEN COURT
This 7th day of March, 2003.
HOUSTON L. BROWN, JUDGE

FINAL JUDGMENT

THIS CAUSE came on to be heard on November 25, 2002, on plaintiffs' complaint, answer of defendants, John S. Roberts, Jr., Darryl E. Compton, M. Jason Compton, Complex Properties, L.L.C., testimony taken orally before the Court, deposition of Charles H. Pritchett, Jr., MAI, and numerous exhibits; the Court makes the following Findings of Fact and Conclusions of Law:

Findings of Fact

Plaintiffs filed their complaint in this cause seeking to recover $384,956.62 with interest thereon at the rate of 8 3/4% per annum from June 21, 1999 due by a mortgage note dated February 15, 1994, in the original amount of $695,000. The mortgage note was secured by a certain mortgage of even date with said mortgage note on the following-described real estate, located and situated in the City of Birmingham, Jefferson County, Alabama:

> Lots 1, 2, and 3 according to the Map of S & S Survey, as recorded in Map Book 108, Page 9, in the Office of the Judge of Probate of Jefferson County, Alabama.

The mortgage is recorded in Instrument No. 9403/2522 in said probate office. The mortgage was foreclosed under the power of sale contained therein on June 21, 1999. The property described in the mortgage was sold to S & S Builders & Associates at the

foreclosure sale for the sum of $335,000, with said sum being the exact amount of the appraisal of the subject property made by Charles H. Pritchett, Jr., MAI. The foreclosure deed is recorded in Instrument No. 9908/7537 in said probate office.

The unpaid principal balance together with accrued interest on said mortgage note and mortgage on the date of the foreclosure sale was $608,037.01, with interest thereon to and including June 21, 1999, in the amount of $10,818.68. The late charges are in the amount of $550.00. Prior to the foreclosure, the property was sold to the State of Alabama for delinquent ad valorem taxes and the amount necessary to redeem the property from the tax sale was $81,126.57. There were numerous sewer liens against the property, the total of which was $18,884.06. The publication fee incurred in the foreclosure was in the amount of $79.80. The attorney's fee for foreclosing the mortgage was $1,000. The cost of recording the foreclosure deed was $10.00. The total mortgage indebtedness, together with the expenses of foreclosure as of June 21, 1999, was $719,956.62.

The said real property was improved by a multi-unit apartment complex which was in extremely poor condition and state of repair at the time of the foreclosure. The appraiser, Charles H. Pritchett, Jr., testified by deposition and he opined that many of the apartment units were not habitable. Mr. Pritchett's appraisal

was offered and admitted in evidence without objection. The appraisal describes in detail the deteriorated condition of the apartment complex.

The appraiser, Charles H. Pritchett, Jr., opined that the fair market value of the apartment complex on June 21, 1999, was in the amount of $335,000.

The mortgage note and mortgage provide that in the event of a default of the mortgage note and mortgage that the plaintiffs are entitled to recover a reasonable attorney's fee.

Conclusions of Law

The purpose of a foreclosure sale is to obtain a fair price for the debtor's property in order to pay off the debtor's obligations. Federal Title and Mort. Guaranty Co. v. Lowenstein, 113 N.J. Eq. 200, 166 A. 538 (1933). The main purpose of foreclosure sales are to calculate any deficiency the mortgagor must pay and to protect the mortgagor's right to any surplus. Continental Casualty Co. v. Brawner, 148 So. 809, 811 (1936). When a property is sold at a foreclosure sale in an amount greater than the indebtedness secured by a mortgage, the mortgagee is liable to the mortgagor for the surplus, but if the property brings less than the debt, the mortgagor is liable for the deficiency. Meadows v. Birmingham Federal Savings & Loan Assn., 166 So. 53 (Ala. 1936).

If a sale is made in strict conformity with the power of sale contained in the mortgage or deed of trust, and enough is not realized to satisfy the claims of the mortgagee, the mortgagee is entitled to a deficiency judgment. Stollenwerck v. Marks & Gayle, 65 So. 1024.

The defendants are jointly and severally liable for the payment of the indebtedness evidenced by said mortgage note and secured by said mortgage.

JUDGMENT

After hearing the testimony and reviewing the exhibits and the law applicable to mortgage foreclosures, it is the opinion of the Court that the plaintiffs are entitled to recover and are hereby awarded a judgment against the defendants, John S. Roberts, Jr., Darryl E. Compton, M. Jason Compton, and Complex Properties, L.L.C. in the amount of $392,154.46.

Plaintiffs are also entitled to recover a reasonable attorney's fee against the defendants which the Court finds to be in the amount of $58,823.17. Plaintiffs are hereby awarded a judgment in the amount of $450,977.63, with waiver of exemptions as to personal property.

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The court costs incurred in this cause are hereby assessed and taxed against defendants.

DONE and ORDERED on this the 7th day of March, 2003.

Houston L Brown
CIRCUIT JUDGE

cc: Douglas Corretti, Esquire
Dick Nave, Esquire
James M. Kendrick, Esquire