

RECEIVED

Oct 27 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	OF THE FOURTH JUDICIAL CIRCUIT
COUNTY OF DARLINGTON)	CASE NO.: 2020-CP-16-00333
Layton Swinney,)	
)	
Plaintiff,)	
)	
-vs-)	SPECIAL REFEREE'S ORDER
)	GRANTING PLAINTIFF JUDGMENT
)	OF FORECLOSURE
Larry Scott and Tillette Scott,)	
)	
Defendant(s).)	(NON-JURY MORTGAGE FORECLOSURE)
_____)	

Pursuant to Rule 53 SCRCP, the above-entitled matter was referred to the undersigned to make appropriate findings of fact and conclusions of law with authority to enter a final judgment in the case. Pursuant to the said Order of Reference, a hearing was held on August 26, 2022 at 10:00 A.M. Plaintiff's request for entry of a Judgment of Foreclosure was attended by Cody T. Mitchell, attorney for Plaintiff. Defendant(s) Larry Scott and Tillette Scott attended in person, and each offered testimony.

Upon hearing the statements of counsel for the Plaintiff, along with sworn testimony offered by both the Plaintiff and Defendants and after examining the evidence, I find and conclude as follows:

PROCEDURAL HISTORY

1. The Summons & Complaint were filed March 31, 2020.
2. Service was made upon Defendants named in this Order on March 31, 2020, as shown by the Proof(s) of Service filed herein.
3. Both Defendants filed general Answers of denial on April 24, 2020.
4. The Defendants are without counsel, and they were notified of the time, date, and

ELECTRONICALLY FILED - 2022 Oct 18 4:55 PM - DARLINGTON - COMMON PLEAS - CASE#2020CP1600333

place of hearing in this matter and both attended in person.

5. This matter is not a mortgage foreclosure action but this hearing is to determine the equity or lack thereof, in regard to a land sale contract (and here, more specifically, a “lease with purchase option.”

FINDINGS OF FACT

Layton Swinney (“Plaintiff”), Larry Scott and Tillette Scott (“Defendants”) executed a Lease with Purchase Option dated September 21, 2018. The contract provided for a purchase price of \$85,000.00, with a \$4,000.00 down payment and \$1,600.00 a month in rental payments. The down payment was made and acknowledged by Plaintiff. The monthly rent was paid from the inception of the contract until August 1, 2019, when the payments simply stopped arriving. Both Plaintiff and Defendants acknowledged that no payments were made after August 1, 2019. Tillette Scott stated “they didn’t have money at the time.”

In 2020 Plaintiff initiated an eviction action in the Hartsville Magistrate Court. Plaintiff was informed by the court that because his contract was a “lease with purchase option [he] would need to pursue foreclosure in the circuit court.”

From August 1, 2019 to the date of this hearing, Defendants testified that no money has been paid for rent or to purchase the property. Plaintiff has continued to pay the property taxes and kept the property insured. Both Defendants testified that they failed to timely execute on their option to purchase. Additionally, Larry Scott testified that they did not pay rent because Plaintiff would not renegotiate the sale price and terms.

The non-payment of rent from August 1, 2019 to the date of this hearing (36 months) at the contract price of \$1,600.00/month totals the sum of \$57,600.00.

The down-payment made by Defendants was \$4,000.00. The prior payments of rent from the date of the contract through August 1, 2019 was clearly paid and applied as rent. The balance on the option as of August 1, 2019 was \$65,000.00. During the hearing, Defendants both admitted to not exercising their purchase option.

In fairness to all parties, I assess the fair market value of just the 'rent' to be \$800.00 a month. At that rate, Defendants are in arrears on rent alone in the amount of \$28,800.00.

CONCLUSION OF LAW

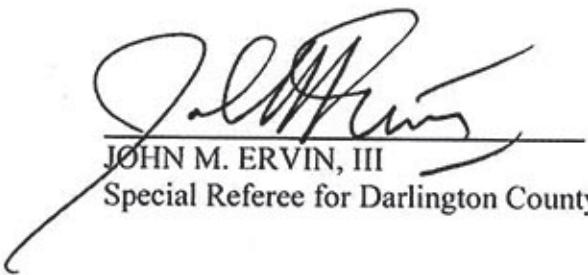
I, therefore, conclude as follows:

1. Defendants have no equity in the subject property, more commonly known as 617 Flicker Lane, Hartsville, SC (TMS # 058-00-03-035). The rent due on the lease is \$28,800.00.
2. Plaintiff is fully entitled to the relief he seeks and should have judgment of foreclosure on the Lease with Purchase Option entered into with Defendants on September 21, 2018. Said contract is clearly in default.
3. The subject property shall be returned to Plaintiff's sole control and possession.

THEREFORE, IT IS ORDERD, ADJUDGED AND DECREED that Defendants (along with anyone else they have allowed to reside with, visit with, stay with, or legally or illegally cohabit with them at said location) shall completely vacate 617 Flicker Lane in Hartsville, South Carolina within fourteen (14) calendar days of the filing and service of this Order upon them. Service shall be made by personal delivery and by **POSTING OF THIS ORDER ON AN ENTRANCE DOOR**. A Certificate of Service shall be filed with the Clerk of Court.

In the event that on, or after, the fourteenth (14) day after service of this Order (as evidenced by the Certificate of Service), any party, person, or personal property shall be found at 617 Flicker Lane in Hartsville, South Carolina, I then hereby **ORDER AND DIRECT** that the Darlington County Sheriff (or any duly appointed agent thereof), physically set-out any person or property found therein and further that the Sheriff assist the Plaintiff in being able to secure his property for his sole ownership and control. **I FURTHER ORDER THAT** upon removal of any person from 617 Flicker Lane in Hartsville, SC, that any removed party returning to this address shall be a trespasser and subject to arrest.

IT IS SO ORDERED!



JOHN M. ERVIN, III
Special Referee for Darlington County

Darlington, South Carolina
October 17, 2022