

EXHIBIT 5

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

Moats Construction, Inc.,)
)
Plaintiff,)
)
v.)
)
Cecil R. Dyar,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2020-CP-04-01202

**Order Granting Defendant’s
Motion for Damages and Judgment of
Foreclosure and Sale**

RECEIVED

Oct 26 2022

SC Court of Appeals

This matter is before the Court for a damages hearing. In the Court’s Order filed June 10, 2021, the terms, provisions and rulings of this Court therein, which are incorporated herein and made a part of this Order by reference thereto, this Court found that Cecil R. Dyar (“Dyar”) was entitled to Summary Judgment against Moats Construction, Inc., (“Moats”) as a matter of law and, accordingly, ruled that Dyar was entitled to immediate possession of the premises and to retain all amounts paid by Moats as rent and liquidated damages or, in the alternative, and, at the option of Dyar, ordered and decreed that the entire balance, as determined at a promptly held damages hearing pursuant to Rule 55(b)(2) of the South Carolina Rules of Civil Procedure, was immediately due and payable entitling Dyar to seek a sale of the property and foreclosure of all rights of Moats in and to the property.

A damages hearing was held before the Court on February 24, 2022. Present at the hearing was Wendell Hawkins, attorney for Moats and Russell T. Moats, and James W. Logan, attorney for Dyar. After careful consideration of all of the evidence in this matter, including the testimony taken at this hearing and the admitted Exhibits, this Court finds and concludes as follows:

FINDINGS OF FACT

1. That Dyar is entitled to a judgment of Foreclosure of the subject Agreement against Moats upon which there is owed the amount of \$222,415.95, as of February 1, 2022, plus interest at the legal rate from February 1, 2022, attorney's fees of fifteen percent (15%), pursuant to the Agreement for Sale and Purchase of Real Property ("Agreement") dated January 29, 2011 between the parties hereto, and the costs of this action.
2. Moats has admitted that foreclosure is appropriate in this case, although he disagreed as to the balance of the purchase price due and payable.
3. The real property, which is the subject of this action, is located at 300 – 600 West Orr Street, Anderson, South Carolina, situate in Anderson County, South Carolina and bearing Anderson County Tax Map Number 123-24-03-003 and is more particularly described as follows:

All that certain lot or parcel of land, situate, lying and being in Anderson, South Carolina, in Anderson County, more particularly described as follows: BEGINNING at a point 22.5 feet northeastwardly, measured at a right angle, from a point in the center line of the main track of Carolina and Northwestern Railway Company, 1997 feet northwestwardly, measured along said center line, from Milepost 10 on said railroad; and running thence southeastwardly, along the southerly boundary of property conveyed by Blue Ridge Railway Company to Abner J. Nagin, et al, by deed dated November 15, 1960, recorded in the Office of the Clerk of Court for Anderson County, in Book 12-N, at Page 60, a distance of 150 feet, more or less, to the southeasterly corner of said property; thence northeastwardly along the easterly boundary of the property conveyed to by said deed of November 15, 1960, a distance of 128.5 feet; thence northeastwardly along a line forming an interior angle of 90 degrees with the preceding course, a distance of 60 feet; thence southeastwardly along a line forming an interior angle of 90 degrees with the preceding course, a distance of 200 feet; thence southwestwardly, along a line forming an interior angle of 90 degrees with the preceding course, a distance of 231 feet, more or less, to a point 22.5 feet northwestwardly measured at right angle from the center line of the main track of Carolina and Northwestern Railway Company; thence northwestwardly parallel to and at all points 22.5 feet from the center line of said main track, a distance of 227 feet, more or less, to the point of beginning containing 0.61 of an acre, more or less, and being located substantially as shown outlined in orange on print of drawing No. 5/3434, dated September 10, 1964, and annexed to deed of Blue Ridge Railway Company to Kent Steel of South Carolina, Incorporated, recorded in the Office of the Clerk of Court for Anderson County, South Carolina in Deed Book 16-V, at Page 816; SAVING and RESERVING unto Blue Ridge Railway Company a right of way or easement for said portion of tract 20 feet

in width or 10 feet on either side of the center line of said portion of track, together with such additional right of way as may be necessary to accommodate cut slopes, fill slopes and ditches for said portion of spur track; and also RESERVING unto Blue Ridge Railway Company the right to remove said track in the future if Blue Ridge Railway Company so elects.

This is the same property conveyed unto Cecil R. Dyar by deed of Alice Donnelly, Phillip Halle, Executor of Evelyn B. Nagin Estate, Beatrice Penner, Michael J. Cryne, Jr., Bernice C. Sorokach and Robert F. Cryne dated February 7, 1994 and recorded in Deed Book 1863, at Page 263, records of Anderson County, South Carolina.

AND ALSO:

All that certain piece or parcel of land situate, lying and being in Anderson, South Carolina, more particularly described as follows: BEGINNING at an point 57.8 feet northeastwardly, measured at a right angle from point in the center line of the main track now or formerly of Blue Ridge Railway Company, 1850 feet northwestwardly measured along the center line of said main track from Milepost 10; and running thence northwestwardly a distance of 150 feet, more or less, to a point 22.5 feet northeastwardly, measured at a right angle, from the center line of said main track; thence Northwestwardly a distance of 287 feet, more or less, to a point 18.1 feet northeastwardly measured at a right angle, from the center line of said main track, thence northeastwardly parallel to 1.5 feet northeastwardly from the northwesterly line of an existing building or of said line as projected, a distance of 60 feet; thence southeastwardly, at a right angle to preceding course, a distance of 430 feet; thence southwestwardly a distance of 117 feet, more or less, to the point of beginning; containing .90 acres, more or less, and being located substantially as shown in orange on print of drawing No. B-7268, dated July 20, 1960, annexed to deed of Blue Ridge Railway Company by Abner J. Nagin, et al, dated November 15, 1960, SUBJECT however to such rights as Duke Power Company may have to maintain upon said premises its existing transformer, power lines and supports thereof located. RESERVING unto Blue Ridge Railway Company the portion of Tract 11-11 located upon and within the aforesaid described premises together with a right of way or easement for said portion of tract 16 feet in width or 8 feet on either side of the center line of said portion of tract.

This is the same property conveyed unto Cecil R. Dyar by deed of Alice Donnelly, Phillip Halle, Executor of Evelyn B. Nagin Estate, Beatrice Penner, Michael J. Cryne, Jr., Bernice C. Sorokach and Robert F. Cryne dated February 7, 1994 and recorded in Deed Book 1863, at Page 263, records of Anderson County, South Carolina.

4. The real property which is the subject of this action is not an owner-occupied dwelling within the Supreme Court's Administrative Order dated May 2, 2011 and, therefore, Moats is not entitled to foreclosure intervention.

5. On January 29, 2011, Dyar entered into the Agreement regarding the property in question. Under the terms of that Agreement, Moats agreed to pay Dyar the sum of Two Hundred and Fifty Thousand and no/100 (\$250,000.00) Dollars (“Purchase Price”) as follows: Down Payment of \$37,500.00 and the balance of \$212,500.00, with interest at the rate of six percent (6%) per annum, payable in monthly installments of Four Thousand, One Hundred Eight and 22/100 (\$4,108.22) Dollars each beginning May 1, 2011 and continuing on the same day each month thereafter through April 1, 2016 with principal balance due, together with accrued interest, to be paid on or before March 31, 2016. Thereafter, by agreement, the date that the balance was due was extended until March 16, 2021 with all other terms and conditions to remain the same.

6. The Agreement further provided that, upon payment of the Purchase Price, Dyar would convey to Moats title to the premises by General Warranty Deed, subject to the items referenced therein.

7. Moats is in default under the terms of said Agreement having failed and neglected to pay the installments due since December 31, 2017 and Dyar has elected, as is his right under the Agreement, to declare all sums due under the Agreement immediately due and payable entitling Dyar to seek a sale of the property and to foreclose all of Moats’ interest in and to said premises.

8. Dyar alleges that Moats has no equity in the property which is the subject of this action and that Moats has made no improvements to the subject real estate which he is entitled to be reimbursed under the plain language of the Agreement.

9. The payments made under the terms of this Agreement are representative of the fair market rental value of the subject real property.

10. At the damages hearing, Dyar presented the testimony of Joshua Pruet-Lange, a registered tax preparer with the Internal Revenue Service and a bookkeeper since 2016 employed by Electric City

Tax and Bookkeeping, formerly Shiflett Bookkeeping and Tax. Mr. Pruet-Lange examined the records of payments made under the Agreement by Moats to Dyar and testified that, in his opinion, the balance owed as of February 1, 2022 is \$222,415.95. Moats presented no expert testimony at the hearings regarding the amount owed under the Agreement nor any evidence at the hearings pertaining to any offsets/improvements, if any, to which he claims he is entitled or the value thereof. Further, Moats has failed to present at the hearings any testimony as to any equity he is entitled to and/or to receive the benefit for, other than “sweat equity.”

11. The balance due under the Agreement is the sum of \$222,415.95 as of February 1, 2022 together with attorney’s fees, any advance(s) for taxes and insurance, and the costs of this action, including Court costs.

12. The amount due and owing on the Agreement, with interest at the legal rate of 7.25% after February 1, 2022, together with 15% as attorney’s fees, advances for taxes and insurance, and the costs of this action is:

(a) Principal & Interest due as of February 1, 2022	\$222,415.95
(b) Interest due at 6% per annum thereafter through April 1, 2022 (\$1,112.08 per month)	\$ 2,224.16
(c) Costs of Collection prior to Hearing	\$ 3,677.84
(d) Attorney’s Fees (see attached Affidavit)	\$ 22,296.09
Total Debt Secured by Agreement (including interest to date)	\$ 250,614.04

CONCLUSIONS OF LAW

NOW, ON MOTION OF DYAR’S ATTORNEY, James W. Logan, Jr. of Logan & Jolly, LLP,:

IT IS ORDERED, ADJUDGED AND DECREED:

1. That there is due to Dyar on the Agreement set forth in the Complaint the sum of \$250,614.04 representing the total debt due Dyar as set out in Paragraph 12 supra, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof.

2. The amount due in the preceding Paragraph (the "Total Debt" as set forth in Paragraph 12 supra and later accrued interest on the principal) shall constitute the total debt due Dyar and shall bear interest hereafter at the rate of 6% per annum.

3. That Moats is liable for the aforesaid amount owed on the Bond for Title shall on or before the date of sale of the property hereinafter described, pay to Dyar, or Dyar's attorney the amount aforesaid, together with the costs and disbursements of this action.

4. That Moats, who is liable for the aforesaid amount owed on the Agreement, shall, on or before the date of the sale of the property hereinafter described, pay to Dyar or Dyar's attorney the amount aforesaid, together with the costs and disbursements of this action.

5. That, on default of payment at or before the time herein indicated, the subject property described in the Complaint, as hereinafter set forth, be sold by the Honorable Steven C. Kirven, Master in Equity for Anderson County, South Carolina at public auction at Courtroom Number Two on the Third Floor of the Courthouse for Anderson County, in the City of Anderson, County of Anderson, State of South Carolina, 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 shall be on the next Tuesday succeeding such holiday), on the following terms, that is to say:

(a) FOR CASH: The Master will require a deposit of five (5%) percent of the amount of the bid (in cash or equivalent) same to be applied on the purchase price only upon compliance

with the bid, but in case of non-compliance within twenty (20) days same to be forfeited and applied to the costs of Dyar's debt;

(b) Interest on the balance of the bid shall be paid to the day of compliance at the rate of 6% per annum.

(c) The sale shall be subject to taxes and assessments, existing easements and easements and restrictions of record.

(d) Purchaser to pay for deed stamps and costs of recording the deed.

6. If Dyar be the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses and indebtedness of Dyar in full, Dyar may pay to the Master in Equity only the amount of costs and expenses crediting the balance of the bid on the indebtedness.

7. That the Master in Equity, will by advertisement according to law, give notice of the time and place of such sale, and the terms thereof; and will execute to the Purchaser, or Purchasers, a deed to the premises sold. Dyar, or any other party to this action, may become a purchaser at such sale, and that if, upon sale being made, the Purchaser or Purchasers should fail to comply with the terms thereof within twenty (20) days after the date of sale, then the undersigned Master in Equity may advertise 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.

8. Personal or deficiency judgment being waived the bidding will not remain open after the date of sale, but compliance with the bid may be made immediately.

9. That the undersigned Master do apply the proceeds of the 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 the Court;

NEXT: To the payment to Dyar or Dyar's attorney, of the amount owed on the Agreement and interest or so much thereof as the purchase money will pay.

NEXT: Any surplus will be held pending further Order of the Court.

10. It is further ORDERED, ADJUDGED AND DECREED that in the event the successful bidder is other than Moats in possession herein, the Sheriff of Anderson 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 full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.

11. And it is further ORDERED, ADJUDGED AND DECREED that Moats, and all persons whomsoever claiming under him, them or it, be forever barred and foreclosed of all right, title, interest and equity of redemption in said premises so sold, or any part thereof.

12. IT IS FURTHER ORDERED that the deed of conveyance made pursuant to said sale shall contain the name of Dyar who is the titleholder of the property at the time of the filing of the within action, and the name of the grantee, and the Clerk of Court is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

13. The Master in Equity will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to the issuance of the Order of Ejection.

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

All that certain lot or parcel of land, situate, lying and being in Anderson, South Carolina, in Anderson County, more particularly described as follows: BEGINNING at a point 22.5 feet northeastwardly, measured at a right angle, from a point in the center line of the main track of Carolina and Northwestern Railway Company, 1997 feet northwestwardly, measured along said center line, from Milepost 10 on said railroad; and running thence southeastwardly, along the southerly boundary of property conveyed by Blue Ridge Railway Company to Abner J. Nagin, et al, by deed dated November 15, 1960, recorded in the Office of the Clerk of Court for Anderson County, in Book 12-N, at Page 60, a distance

of 150 feet, more or less, to the southeasterly corner of said property; thence northeastwardly along the easterly boundary of the property conveyed to by said deed of November 15, 1960, a distance of 128.5 feet; thence northeastwardly along a line forming an interior angle of 90 degrees with the preceding course, a distance of 60 feet; thence southeastwardly along a line forming an interior angle of 90 degrees with the preceding course, a distance of 200 feet; thence southwestwardly, along a line forming an interior angle of 90 degrees with the preceding course, a distance of 231 feet, more or less, to a point 22.5 feet northwestwardly measured at right angle from the center line of the main track of Carolina and Northwestern Railway Company; thence northwestwardly parallel to and at all points 22.5 feet from the center line of said main track, a distance of 227 feet, more or less, to the point of beginning containing 0.61 of an acre, more or less, and being located substantially as shown outlined in orange on print of drawing No. 5/3434, dated September 10, 1964, and annexed to deed of Blue Ridge Railway Company to Kent Steel of South Carolina, Incorporated, recorded in the Office of the Clerk of Court for Anderson County, South Carolina in Deed Book 16-V, at Page 816; SAVING and RESERVING unto Blue Ridge Railway Company a right of way or easement for said portion of tract 20 feet in width or 10 feet on either side of the center line of said portion of track, together with such additional right of way as may be necessary to accommodate cut slopes, fill slopes and ditches for said portion of spur track; and also RESERVING unto Blue Ridge Railway Company the right to remove said track in the future if Blue Ridge Railway Company so elects.

This is the same property conveyed unto Cecil R. Dyar by deed of Alice Donnelly, Phillip Halle, Executor of Evelyn B. Nagin Estate, Beatrice Penner, Michael J. Cryne, Jr., Bernice C. Sorokach and Robert F. Cryne dated February 7, 1994 and recorded in Deed Book 1863, at Page 263, records of Anderson County, South Carolina.

AND ALSO:

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Railway Company the portion of Tract 11-11 located upon and within the aforesaid described premises together with a right of way or easement for said portion of tract 16 feet in width or 8 feet on either side of the center line of said portion of tract.

This is the same property conveyed unto Cecil R. Dyar by deed of Alice Donnelly, Phillip Halle, Executor of Evelyn B. Nagin Estate, Beatrice Penner, Michael J. Cryne, Jr., Bernice C. Sorokach and Robert F. Cryne dated February 7, 1994 and recorded in Deed Book 1863, at Page 263, records of Anderson County, South Carolina.

IT IS SO ORDERED this _____ day of July, 2022.

The Honorable R. Scott Sprouse
Tenth Judicial Circuit



Anderson Common Pleas

Case Caption: Moats Construction Inc VS Cecil R Dyar

Case Number: 2020CP0401202

Type: Order/Damages

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit