

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
IN THE COURT OF COMMON PLEAS**

JUDGMENT IN A CIVIL CASE

CASE NO. 2015CP0100261

American Advisors Group

Joseph Allen Gambrell; Michael Stephen Gambrell; The United States of America acting by and through its agency The Department of Housing and Urban Development;

PLAINTIFF(S)

DEFENDANT(S)

<p>Submitted by: John J. Hearn (SC Bar # 6635); Brian P. Yoho (SC Bar #73516); Jeriel A Thomas (SC Bar # 101400) Attorneys for the Plaintiff Rogers Townsend, LLC 1221 Main Street, 14th Floor Post Office Box 100200 Columbia, SC 29202 (803) 744-4444 (803) 343-7013 - Fax info@rogerstownsend.com</p>	<div style="font-size: 2em; font-weight: bold; margin-bottom: 10px;">RECEIVED</div> <div style="font-size: 1.5em; font-weight: bold; margin-bottom: 10px;">NOV 30 2022</div> <div style="font-size: 1.5em; font-weight: bold; margin-bottom: 10px;">SC Court of Appeals</div> <p>Attorney for: <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant</p>
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DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: _____

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: As required by statute, a foreclosure sale has been or will be scheduled, which will officially end the case.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

N/A		
		\$
		\$
<p>If applicable, describe the property, including tax map information and address, referenced in the order:</p> <p>All that certain piece, parcel or tract of land situate, lying and being in the State of South Carolina, County of Abbeville, being shown and designated as 15.22 acres, more or less, as shown on a survey entitled "James Allen Gambrell" prepared by Farmer & Simpson Engineers, and being dated July 12, 1972 of record in the Office of the Clerk of Court for Abbeville County, SC in Plat Book 45 at Page 34; and having the metes and bounds, courses and distances as upon said plat appear. Reference being invited to heretofore referenced plat for a more particular description of the above 15.22 acres, more or less.</p> <p>AND</p> <p>All that certain piece, parcel or tract of land situate, lying and being in the State of South Carolina, County of Abbeville, being shown and designated as 0.17 acre, more or less, as shown on a Plat prepared for American Advisors Group, prepared by Chao & Associates, and being dated April 28, 2020 of record in the Office of the Clerk of Court for Abbeville County, SC in Plat Book 79 at Page 88; and having the metes and bounds, courses and distances as upon said plat appear. Said plat is incorporated herein by this reference for a more complete and accurate description, all measurements being a little more or less.</p> <p>This being the same property conveyed to James Allen Gambrell and Edna T. Gambrell by deed of Joe M. Gambrell and Una L. Gambrell dated July 15, 1972, and recorded August 21, 1972, in Book 115 at Page 296 in the Office of the Register of Deeds for Abbeville County. Subsequently, Edna T. Gambrell conveyed her one-half interest in the subject property to James Allen Gambrell by deed dated October 22, 1974, and recorded October 23, 1974, in Book 117 at Page 287. James Allen Gambrell then conveyed an undivided one-half interest in the subject property to Susan C. Gambrell by deed dated February 18, 1998, and recorded February 20, 1998, in Book 204 at Page 467. Susan C. Gambrell conveyed her interest in the subject property to James Allen Gambrell by deed dated October 4, 2010, and recorded October 15, 2010, in Book 285 at Page 143. Subsequently, James Allen Gambrell died on May 11, 2015, leaving the subject property to his heirs and/or devisees, namely, Joseph Allen Gambrell and Michael Stephen Gambrell, as further evidenced by Deed of Distribution recorded in Book 322 Page 574 in Probate Case 2015ES0100133.</p> <p>032-00-00-061</p> <p>405 Horse Farm Road Iva, SC, 29655-8136</p>		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

American Advisors Group,

Plaintiff,

v.

Joseph Allen Gambrell; Michael Stephen Gambrell; The United States of America acting by and through its agency The Department of Housing and Urban Development;

Defendant(s).

(017108-00104)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 2015CP0100261

JUDGMENT OF FORECLOSURE AND SALE
Deficiency Judgment Waived

RECEIVED
NOV 30 2022
SC Court of Appeals

John J. Hearn, Esquire
Attorney for the Plaintiff

Pro Se
Joseph Allen Gambrell – not present

Pro Se
Michael Stephen Gambrell

George Conits, Esquire
Attorney for The United States of America acting by and through its agency The Department of Housing and Urban Development

A hearing was held September 16, 2022 at 10:00 am. Evidence was presented, which is reported herewith, and from the evidence, I make the following findings of fact and conclusions of law as follows:

1. The Lis Pendens was filed on September 16, 2015. A second Lis Pendens was filed on September 22, 2021.
2. The Summons and Complaint were filed on September 16, 2015.
3. Service was made upon all Defendant(s) as shown by the proof(s) of service filed herein.
4. The Defendant(s) Joseph Allen Gambrell and Michael Stephen Gambrell are not in the Military Service of the United States of America, as contemplated under The Servicemembers Civil Relief Act, 50 U.S.C. 3901 et. seq. as shown by affidavit, certificate or order filed herein.

5. Pursuant to the South Carolina Supreme Court Administrative Order 2009-05-22-01 dated May 22, 2009, the Plaintiff set forth its belief in its Complaint or by Affidavit, which is already of record in this case, that the mortgage loan which is the subject of this foreclosure action is not eligible for modification pursuant to the terms of the Home Affordable Modification Program (HMP). Pursuant to the South Carolina Supreme Court Administrative Order dated May 22, 2009, Plaintiff's attorney has not received a counter affidavit from any Defendant(s).

6. Attorney for the Plaintiff has fully complied with the South Carolina Supreme Court Administrative Order 2011-05-02-01 dated May 2, 2011 and with the South Carolina Supreme Court Administrative Order 2020-04-30-02 and 2020-05-06-01.

7. Joseph Allen Gambrell filed an answer pro se to the original Summons and Complaint. Michael Stephen Gambrell, Esquire, filed Answers on his own behalf to both the original Complaint and the Amended Complaint. The United States of America acting by and through its agency The Department of Housing and Urban Development filed an answer through their attorney, George Conits, Esquire.

8. This Court, on September 9, 2016, entered an Order Summary Judgment on Defendants Joseph Allen Gambrell and Michael Stephen Gambrell's Counterclaim.

9. This Court, on February 17, 2020, entered an Order granting Plaintiff's Motion for Summary Judgment as to Plaintiff's first through seventh causes of action in its Amended Complaint. Said Order provided that a Corrective Plat indicating a 0.17 Acre portion of the Adjacent Property shall be recorded with the Abbeville County land records office, and further that Plaintiff's Mortgage encumbers said 0.17 Acre portion of the Adjacent Property, retroactive to the date of the Mortgage, all of which are subject to the foreclosure in this action.

10. Plaintiff's remaining cause of action is for Foreclosure of Mortgage.

11. All Pro Se Defendant(s) and all attorneys of record were notified of the time, date, and place of the hearing by letter and certificate of mailing of record herein.

12. Karen Dickinson, a vice-president in litigation for the Plaintiff's servicing vendor, Celinek, testified on behalf of the Plaintiff. Plaintiff admitted seven exhibits into evidence without objection by Michael Gambrell. The last of these exhibits, Exhibit Seven, consists of Plaintiff's Loan Foreclosure Breakdown Template.

13. Michael Gambrell testified briefly. Gambrell's entire testimony was as follows:

Yes, sir. My name is Michael Stephen Gambrell, my father was James Allen Gambrell, and I just, you know, wanted to testify with regard—at the time this loan was made, my father was dying of cancer and he ultimately died of cancer in May of 2015.

We didn't know, myself and my brother—well, I can't speak for him. I did not know that my father had made this loan.

He was a lifelong—as far as my life, anyways—alcoholic.
He drank from the time he got up until the time he passed out
and that’s the only testimony I want to give.

Michael Gambrell did not offer any exhibits into evidence. Michael Gambrell’s oral testimony, above, was the only testimony or evidence offered by any defendant in this action.

14. James Allen Gambrell for value received, made, executed and delivered a(n) Fixed Rate Home Equity Conversion Note dated March 14, 2014 promising thereby to pay to Plaintiff or its predecessor the sum of \$252,000.00 with interest at 5.06% per annum. Other terms and conditions are stated in the Fixed Rate Home Equity Conversion Note, of record herein.

15. To better secure the payment of the Fixed Rate Home Equity Conversion Note described above, James Allen Gambrell made, executed, and delivered to Mortgage Electronic Registration Systems, Inc., as nominee for American Advisors Group, its successors and assigns a certain real estate Mortgage in writing, dated March 14, 2014 covering real property in Abbeville County, which is the same as that described in the Complaint. This Mortgage was filed on April 2, 2014, and is of record in the Office of RMC/ROD in Book 19-S at Page 752. This Mortgage was assigned to the Plaintiff herein by assignment dated June 22, 2015, and recorded June 26, 2015, in Book 20-C at Page 849.

16. This Mortgage constitutes a first priority lien on the subject property, subject only to ad valorem taxes or other liens given priority by statute.

17. Plaintiff has the legal right to enforce the negotiable instrument secured by the Mortgage and is the real party in interest as defined by Rule 17(a) of the South Carolina Rules of Civil Procedure.

18. Subsequently, James Allen Gambrell died on May 11, 2015, leaving the subject property to his heirs and/or devisees, namely, Joseph Allen Gambrell and Michael Stephen Gambrell.

19. Payment due on the Fixed Rate Home Equity Conversion Note was not made as provided for therein, and Plaintiff, as the holder or nominee for the holder thereof, elected to require immediate payment of the entire amount due thereon and placed the Fixed Rate Home Equity Conversion Note and Mortgage in the hands of the attorney herein for remedy by foreclosure.

20. The sum of \$7,580.00 is a reasonable fee to allow Plaintiff’s counsel for services performed and anticipated to be performed until final adjudication of this action, under the terms of the Fixed Rate Home Equity Conversion Note and Mortgage. This fee is likewise reasonable based on the time necessarily devoted to representation of Plaintiff during the several month course of these proceedings. The services of counsel performed for Plaintiff, which include the number and types of pleadings and documents prepared, the incumbent liabilities, and the difficulties involved in this particular case also support the fee awarded. The fee is also reasonable given the professional standing of Plaintiff’s counsel and their

experience in handling foreclosure matters. The fee awarded herein is also reasonable in light of the fees customarily awarded by this court for similar services in this locality. Services anticipated to be performed until final adjudication contemplate completion of this matter within a reasonable time and does not include exceptional circumstances delaying conclusion beyond the normal time. Plaintiff has advanced \$1,275.00 to its counsel as partial payment of the attorney fee and this amount appears in Plaintiff's advances.

21. According to Plaintiff's Exhibit Seven (Loan Foreclosure Breakdown Template), after all payments received by Plaintiff have been credited to the subject loan, the amount due and owing on the Fixed Rate Home Equity Conversion Note, with interest at the rate provided in the Fixed Rate Home Equity Conversion Note, advances made by Plaintiff, and other costs and expenses of the action, including a reasonable attorney fee, all secured by the Fixed Rate Home Equity Conversion Note and Mortgage, is as follows:

(a)	Principal due May 11, 2015.....	\$81,965.01
(b)	Interest from March 14, 2014 through March 31, 2022 at 5.06% per annum	\$58,544.10
	Interest from April 1, 2022 through September 16, 2022 at 5.06% per annum	\$5,105.10
(c)	Allowable Advances (Escrow advances, corporate charges, paid attorney fees, paid costs and expenses from the foreclosure action, and/or other charges).....	\$50,808.70
(d)	Attorney Fee (awarded herein, but unpaid).....	\$25,272.88
	TOTAL debt secured by Fixed Rate Home Equity Conversion Note and Mortgage, including interest to date shown.....	\$221,695.79

The amount due may include sums added to the balance pursuant to 24 CFR § 206.1 et seq.

Interest shall accrue to the above stated "Total Debt" after the date of judgment at the rate of 5.06% per annum (pursuant to the terms of the Fixed Rate Home Equity Conversion Note and first Mortgage). Accrued interest shall be added to the "Total Debt" and shall comprise the amount of the Plaintiff's debt secured by the first Mortgage through the date to which such interest is computed.

22. Plaintiff is seeking the usual foreclosure of the first mortgage and has in the Complaint (or subsequently thereto in writing) expressly waived the right to a personal or deficiency judgment.

23. The following Defendant(s) may claim a subordinate lien upon or subordinate legal interest in the subject property and in the event there is a surplus from the sale of the subject property, these Defendant(s) may present through any such lien or legal interest a claim to the surplus at a hearing subsequent to the sale, in accordance with Rule 71(c) South Carolina Rules of Civil Procedure. The said Defendant(s) and such

liens or legal interests are as follows:

a. Joseph Allen Gambrell and Michael Stephen Gambrell by virtue of any interest claimed under the law of intestate succession (S.C. Code Section 62-2-109) or under decedent's will.

b. The United States of America acting by and through its agency The Department of Housing and Urban Development, by virtue of a mortgage given by James Allen Gambrell in the amount of \$252,000.00, dated March 14, 2014, and recorded April 2, 2014 in Book 19-S at Page 766. Also including any other liens they may have.

IT IS THEREFORE ORDERED:

24. Plaintiff has fully complied with The South Carolina Supreme Court Administrative Orders 2009-05-22-01 dated May 22, 2009 and 2011-05-02-01 dated May 2, 2011, and the foreclosure action may proceed.

25. There is due on the Fixed Rate Home Equity Conversion Note and first Mortgage set forth in the Complaint the sum of \$221,695.79, as set out in the Findings of Fact *supra*, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof.

26. The amount due in the preceding paragraph (the "Final Total Debt" as set out in the Findings of Fact *supra*) shall accrue interest at the rate of the respective note rate(s) per annum and together with such interest shall constitute the total judgment debt due Plaintiff.

27. The amount of the judgment shall be subject to increase to permit Plaintiff to recover additional costs, commissions, and expenses not included in the minimum deposit previously made in compliance with S.C. Code Ann. §14-11-310 (1976). It may also increase to include supplemental compensation for attorneys' services not contemplated by the initial fee award. Jurisdiction over the fee award and total debt is reserved to facilitate the assessment and payment of any such costs or supplemental compensation. Such additional costs, commissions and expenses may be established by affidavit and shall be adjudicated by the court without further hearing.

28. The Defendant(s) liable for the aforesaid judgment debt of the Fixed Rate Home Equity Conversion Note and Mortgage including interest at the rate of 5.06% per annum shall pay on or before the date of sale of the property hereinafter described, to Plaintiff or Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, including with the costs and disbursements of this action.

29. On default of payment at or before the time of the sale of the property, the mortgaged property described hereinafter shall be sold by the below signed Master in Equity or other court-appointed or designated agent or auctioneer at public auction at the Abbeville County Courthouse, in the City of Abbeville, and State of South Carolina on a sales day determined by the below signed Master in Equity,

on the following terms:

a. For cash or its equivalent: An immediate deposit of 5% is required on the amount of the bid. The deposit will be applied to the purchase price when total compliance is made. In the event compliance is not made, the deposit shall be forfeited without further hearing and applied first to costs and expense of the action and then to Plaintiff's debt. Should the successful bidder at the regularly conducted sale fail or refuse either to make the required deposit at time of bid or to comply with the other terms of the bid within 30 days, then the property may be re-sold on the same terms and conditions on the same or some subsequent sales day and at the risk of the defaulting bidder.

b. Interest on the balance of the bid after the deposit is applied shall be paid through the day of compliance at the Note rate of 5.06%.

c. The sale shall be subject to taxes and assessments, existing easements and restrictions, and any other senior encumbrances.

d. Purchaser shall pay for any statutory commission on sale from the proceeds of the final bid amount.

e. Purchaser to pay for deed preparation, costs of recording the deed, and transfer taxes on the deed.

f. Purchaser shall be entitled to possession of the premises only after Purchaser fully complies with the bid amount and a deed is issued by the Master in Equity.

30. A personal or deficiency judgment having been waived, the bidding will not remain open after the date of sale and compliance with the bid may be made immediately.

31. Plaintiff may waive any of its rights, in accordance with Rule 71, of the South Carolina Rules of Civil Procedure, prior to sale.

32. The Master in Equity will give notice of the time and place of the sale by advertisement according to law and the terms thereof by advertisement according to law and will execute to the Purchaser a deed to the property sold. Plaintiff or any other party to this action may become a purchaser at such sale. If, upon such sale being made, the Purchaser should fail to comply with the terms thereof within 30 days after date of sale, then the Master in Equity may advertise the 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.

33. In the event an agent of Plaintiff does not appear at the time of sale, the within property shall be withdrawn from sale and sold at the next available sales date upon the same terms and conditions as set forth in this Judgment of Foreclosure and Sale or such terms as may be set forth in a supplemental order.

34. If Plaintiff is the successful bidder at the said sale for a sum not exceeding the amount of costs and expenses of the sale, plus the indebtedness of Plaintiff in full, Plaintiff may pay to the Master in Equity only the amount of the costs and expenses crediting the balance of the bid on Plaintiff's indebtedness.

35. The Master in Equity will apply the proceeds of the sale as follows:

FIRST: To the payment of the permitted costs, charges, and expenses of this action, including any Guardian ad Litem fee, Servicemember Civil Relief Act attorney fee, or any other attorney's fees awarded under this or any other Order of this Court;

NEXT: To the payment to 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 the Plaintiff's attorney shall receive and disburse such funds only in absolute compliance with Plaintiff's principal, interest allowable advances, and related calculations of this Court, including the Court's award for attorney fees, court permitted charges and taxable costs pursuant to Rules 54 and 71 of the South Carolina Rules of Civil Procedure and the terms of the Note and Mortgage;

NEXT: Any surplus will be held pending further Order of the Court as provided for in the South Carolina Rules of Civil Procedure, particularly Rule 71(c) of the South Carolina Rules of Civil Procedure.

36. The Defendant(s) named herein, and all persons whosoever claiming under Defendant(s), are forever barred and foreclosed of all right, title, interest, equity of redemption or lien in the said mortgaged property so sold, or any part thereof.

37. In accordance with Rule 77(d), of the South Carolina Rules of Civil Procedure, the Clerk of Court shall serve a notice of entry of this Judgment of Foreclosure upon all parties not in default for failure to appear in this action.

38. The deed of conveyance made pursuant to the foreclosure sale shall contain the names of only the first-named Plaintiff and the first-named Defendant(s), and the Defendant(s) who was/were the titleholder(s) of the mortgaged property at the time of the filing of the notice of pendency of the within action, and the name of the grantee. The Register of Deeds/Clerk of Court is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

39. The undersigned will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance.

40. The following is a description of the property herein ordered to be sold:

All that certain piece, parcel or tract of land situate, lying and being in the State of South Carolina, County of Abbeville, being shown and designated as 15.22 acres, more or less, as shown on a survey entitled "James Allen Gambrell" prepared by Farmer & Simpson Engineers, and being dated July 12, 1972 of record in the Office of the Clerk of Court for Abbeville County, SC in Plat Book 45 at Page 34; and having the metes and bounds, courses and distances as upon said plat appear. Reference being invited to heretofore referenced

plat for a more particular description of the above 15.22 acres, more or less.

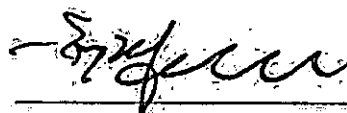
AND

All that certain piece, parcel or tract of land situate, lying and being in the State of South Carolina, County of Abbeville, being shown and designated as 0.17 acre, more or less, as shown on a Plat prepared for American Advisors Group, prepared by Chao & Associates, and being dated April 28, 2020 of record in the Office of the Clerk of Court for Abbeville County, SC in Plat Book 79 at Page 88; and having the metes and bounds, courses and distances as upon said plat appear. Said plat is incorporated herein by this reference for a more complete and accurate description, all measurements being a little more or less.

This being the same property conveyed to James Allen Gambrell and Edna T. Gambrell by deed of Joe M. Gambrell and Una L. Gambrell dated July 15, 1972, and recorded August 21, 1972, in Book 115 at Page 296 in the Office of the Register of Deeds for Abbeville County. Subsequently, Edna T. Gambrell conveyed her one-half interest in the subject property to James Allen Gambrell by deed dated October 22, 1974, and recorded October 23, 1974, in Book 117 at Page 287. James Allen Gambrell then conveyed an undivided one-half interest in the subject property to Susan C. Gambrell by deed dated February 18, 1998, and recorded February 20, 1998, in Book 204 at Page 467. Susan C. Gambrell conveyed her interest in the subject property to James Allen Gambrell by deed dated October 4, 2010, and recorded October 15, 2010, in Book 285 at Page 143. Subsequently, James Allen Gambrell died on May 11, 2015, leaving the subject property to his heirs and/or devisees, namely, Joseph Allen Gambrell and Michael Stephen Gambrell, as further evidenced by Deed of Distribution recorded in Book 322 Page 574 in Probate Case 2015ES0100133.

Property Address: 405 Horse Farm Road
Iva, SC 29655-8136

TMS/PIN# TMS# 032-00-00-061



Roy R. Hemphill

Master in Equity, Abbeville County

Oct. 17, 2022

Abbeville, South Carolina