

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

CitiMortgage, Inc.,

Plaintiff,

vs.

Cheryl Whipper Hamilton a/ka/ Cheryl W. Hamilton a/k/a Cheryl Hamilton, James R. Hamilton, The South Carolina Department of Revenue, The United States of America, by and through its agency, the Internal Revenue Service, Crowfield Plantation Community Services Association, Inc. and Park at Rivers Edge Horizontal Property Regime A, Inc.,

Defendant(s).

(File No. 4008.29412)

RILEY POPE & LANEY, LLC  
Attorneys for Plaintiff

IN THE COURT OF COMMON PLEAS

C/A NO.: 2012-CP-08-2346

**MASTER IN EQUITY'S ORDER OF  
JUDGMENT OF FORECLOSURE AND  
SALE DECREE**

(Non-Jury)

(Deficiency Waived)

FILED  
2013 MAY 28 AM 11:04  
HANK P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, SC

Cheryl Whipper Hamilton a/ka/ Cheryl W. Hamilton a/k/a Cheryl Hamilton  
*Pro Se*

James R. Hamilton  
*Pro Se*

Milton G. Kimpson  
Attorney for The South Carolina Department of Revenue

Matthew J. Modica  
Attorney for The United States of America, by and through its agency, the Internal Revenue Service

Paul A. James  
Attorney for Crowfield Plantation Community Services Association, Inc.

Pursuant to Rule 53 SCRPC, 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 this cause without further order of court. Any appeal from this Order shall be directly to the South Carolina Court of Appeals.

Pursuant to said Order of Reference a hearing was held on April 29, 2013, attended by attorneys for the Plaintiff and, based upon the proof made of the facts and circumstances alleged in the pleadings, I find, conclude and order as follows:

FINDINGS OF FACT:

- 1) The Lis Pendens was filed on August 13, 2012.
- 2) The Summons and Complaint were filed on August 13, 2012.
- 3) Service was made upon the Defendants as shown by the proof of service filed herein.
- 4) The Defendant Park at Rivers Edge Horizontal Property Regime A, Inc are in default as shown by Affidavit, Notice, or Order filed herein.
- 5) The Defendants and all attorneys of record were notified of the time, date, and place of the hearing in this matter.
- 6) According to the affidavit filed herein, a good faith investigation did not determine that the defaulting property owner is in the military service and therefore entitled to protection under the Servicemembers' Civil Relief Act (SCRA) of 2003, or any amendments thereto.
- 7) For value received, James R. Hamilton and Cheryl W. Hamilton made, executed and delivered a note ("Note") dated February 23, 1996, promising thereby to pay to the order of Wachovia Mortgage Company the sum of One Hundred Eighty Thousand Forty Five and 00/100 (\$180,045.00) Dollars, with interest at the rate of 7.00% per annum, with a current rate of 7.0000% per annum. Other terms and conditions are stated in the Note, which is of record herein.
- 8) To better secure the payment of the Note described above, James R. Hamilton and Cheryl W. Hamilton a/k/a Cheryl Whipper Hamilton made, executed, and delivered to Wachovia Mortgage Company a certain real estate mortgage ("Mortgage") in writing, dated February 23, 1996, covering real property in Berkeley County, which is the same as that described in the Complaint. The Mortgage was filed in the Office of the Register of Mesne Conveyances/Register of Deeds for Berkeley County on March 1, 1996, in Book 814 at Page 303. Thereafter, by assignment recorded in the said ROD Office on July 19, 1996 in Book 895,

at Page 334, the said Wachovia Mortgage Company assigned said mortgage to Principal Residential Mortgage, Inc. Thereafter, on or about January 21, 2005, Principal Residential Mortgage, Inc. merged into CitiMortgage, Inc.

9) The Mortgage evidences and secures the repayment of money advanced by the mortgagee to, or on behalf of, the mortgagor(s) and constitutes a first mortgage lien on the mortgaged premises.

10) Thereafter James R. Hamilton conveyed his interest in the subject property unto Cheryl Whipper Hamilton, which deed was recorded on March 18, 2004 in Deed Book 3888, at Page 68.

11) The Plaintiff is the real party in interest pursuant to SCRCP 17(a) and is entitled to enforce the terms of the subject Note and Mortgage.

12) The titleholders of record of the subject property as of the filing of the Lis Pendens in this action is Cheryl Whipper Hamilton

13) Any notice required by the terms of the Note and/or Mortgage or by state or federal statutes has been given to the applicable Defendants prior to the commencement of this action.

14) The loan evidenced by the Note and Mortgage is serviced by a servicer participating in the Home Affordable Modification Program (HAMP). It is not owned, securitized or guaranteed by Fannie Mae or Freddie Mac. Based on the allegations in the Complaint that the subject loan is not eligible for HAMP modification, the Court finds that there are no HAMP issues to be resolved before foreclosure is ordered or the sale is commenced.

15) An Attorney Certification having being filed in this matter pursuant to Administrative Order 2011-05-02-01, the Court finds that the foreclosure action may proceed to Judgment and Sale.

16) The Note payments which became due on April 1, 2012, and subsequent months, have not been made as provided for therein, and the Plaintiff, as the holder thereof, has elected to require immediate payment of the entire amount due thereon and has placed the Note and Mortgage in the hands of its attorney for collection by foreclosure.

17) The sum of \$1,685.00 is a reasonable fee to allow as attorney's fees for Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of this action, under the terms of the Note and Mortgage. The inclusion of services anticipated to be

performed until final adjudication contemplates completion of this matter within a reasonable time and does not include exceptional circumstances delaying conclusion beyond the normal time.

18) The amount due and owing on the Note, with interest at the rate provided in the Note, and other costs and expenses of the within action, including an attorney's fee, secured by the Note and Mortgage, is as follows:

(a) Principal amount due as of April 1, 2012	\$119,042.32
(b) Interest from March 1, 2012 to January 19, 2013 at a current rate of 7.0000%	\$7,355.04
Interest from January 19, 2013 to April 29, 2013 at a current rate of 7.0000%	\$2,283.00
(c) Advances	
Property Inspections, BPOs, Appraisals	\$593.00
Escrow	\$2,700.17
Unapplied Funds	-\$447.00
(d) Late charges	\$191.64
(e) Costs of collection prior to hearing (service of process, filing fees, etc.	\$1,760.00
(f) Attorneys Fee	\$1,685.00
<b>Total debt secured by Note and Mortgage, including interest to date shown</b>	<b>\$135,163.17</b>

Interest for the period from the date shown in (b) 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 judgment at the rate of 7.0000% per annum (pursuant to the terms of the Note and Mortgage) on the judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the Mortgage through the date to which such interest is computed.

19) The Plaintiff is seeking the usual foreclosure of the mortgage and has in the Complaint, or subsequently thereto in writing, expressly waived the right to a personal or deficiency judgment pursuant to Rule 71(b) SCRCF.

20) The following Defendants claim or may claim a lien upon or interest in the subject property or are otherwise involved in this matter. In the event there is a surplus from the sale of the subject property, the validity, priority and amount of such liens will be determined at a hearing subsequent to the sale, in accordance with Rule 71(c), SCRCF. The Clerk of

Court/Register of Deeds is hereby ordered to release said liens in so much as it pertains to the property which is the subject of this action:

*The South Carolina Department of Revenue by virtue of any lien(s) of record, including, but not limited to, a Tax Lien or Warrant for Distraint against Cheryl W. Hamilton bearing Tax Lien/Warrant No. 3-50786166-8 and File/Identifying No. 95970716, in the amount of \$3,268.39, dated March 6, 2007, and recorded on March 13, 2007 in Book 78 at Page 165. Any such interest in or lien upon the said property is junior and subordinate to Plaintiff's mortgage.*

*The South Carolina Department of Revenue by virtue of any lien(s) of record, including, but not limited to, a Tax Lien or Warrant for Distraint against Cheryl W. Hamilton, bearing Tax Lien/Warrant No. 3-50860833-4 and File/Identifying No. 96968805, in the amount of \$3,051.09, dated October 22, 2007, and recorded on October 31, 2007 in Book 101 at Page 187. Any such interest in or lien upon the said property is junior and subordinate to Plaintiff's mortgage.*

*The United States of America, by and through its agency, the Internal Revenue Service, by virtue of any lien(s) of record, including, but not limited to, a Notice of Federal Tax Lien against Cheryl W. Hamilton, Serial No. 655290810, for delinquent taxes in the amount of \$24,958.73, said lien being dated May 12, 2010 and recorded on May 21, 2010 in Book 209 at Page 162. Any such interest in or lien upon the said property is junior and subordinate to Plaintiff's mortgage.*

*Crowfield Plantation Community Services Association, Inc. by virtue of its Notice of Lien in the amount of \$780.83, dated August 6, 2010 and recorded August 11, 2010 in Book 8564 at Page 16. Any such interest or lien upon the subject property is junior and subordinate to Plaintiff's mortgage.*

*The South Carolina Department of Revenue by virtue of any lien(s) of record, including, but not limited to, a Tax Lien or Warrant for Distraint against Cheryl Hamilton, bearing Tax Lien/Warrant No. 3-51293108-8 and File/Identifying No. 88011572, in the amount of \$3,056.56, dated August 15, 2011, and recorded on August 22, 2011 in Book 267 at Page 331. Any such interest in or lien upon the said property is junior and subordinate to Plaintiff's mortgage.*

*Park at Rivers Edge Horizontal Property Regime A, Inc. by virtue of a judgment against Cheryl Whipper Hamilton in the amount of \$7,499.99, recorded with the Berkeley County Clerk of Court on May 9, 2012 in Judgment Roll No. 2012-CP-08-1377. Any such interest in or lien upon the property is junior and subordinate to Plaintiff's mortgage.*

#### CONCLUSIONS OF LAW

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1) The Plaintiff's Mortgage should be declared a first mortgage lien and Plaintiff should have judgment of foreclosure of the mortgage and the mortgaged property should be ordered sold at public auction after due advertisement.

2) The Court finds that there are no HAMP issues to be resolved before foreclosure is ordered or the sale is commenced.

3) The Court also finds that the Plaintiff is in compliance with Administrative Order 2011-05-02-01 and that the foreclosure action may proceed to Judgment and Sale.

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

5) Pursuant to Rule 53, SCRCF, this Order shall constitute a final judgment.

6) There is due to the Plaintiff on the Note and Mortgage set forth in the Complaint the sum of \$135,163.17, as set out in the Findings of Fact *supra*.

7) The amount due in the preceding paragraph (the "Total Debt" as set out in the Findings of Fact *supra*, and later accrued interest on the principal), shall constitute the total judgment debt due Plaintiff and shall bear interest hereafter at the rate of 7.0000% per annum. The amount of the judgment shall be subject to increase to permit the Plaintiff to recover additional costs, commissions and expenses not included in the judgment figures set forth herein. It may also increase to include supplemental compensation for attorney's services not contemplated by the initial fee awarded. Jurisdiction over the fee award and total debt is reserved to facilitate the assessment and payment of any such costs and/or supplemental compensation. Such additional costs, commissions and expenses may be established by statement and shall be adjudicated by the Court without further finding.

8) The Defendants liable for the aforesaid judgment debt including interest at the rate of 7.0000% per annum shall on or before the date of sale of the property hereinafter described, pay to the Plaintiff, or Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

9) On default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, as hereinafter set forth, shall be sold by the Master in Equity, at public auction, at the County Courthouse in Berkeley, 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 day shall be on some other day appointed by the Court), on the following terms, that is to say:

10) For cash: The Master in Equity, will require, at the time of the bid, a deposit of 5% of the amount of the bid (in cash or equivalent) same to be applied to purchase price if compliance is made, but in the event of non-compliance, the deposit may be forfeited without further hearing and applied first to the costs of the action and then to plaintiff's debt. Should the successful bidder at the regularly conducted sale fail or refuse to make the required deposit at time of bid or comply with the other terms of the bid within thirty (30) days, then the property may be re-sold on the same terms and conditions on some subsequent Sales Day, but at the risk of the defaulting bidders.

11) Interest on the balance of the bid shall be paid through the day of compliance at the rate of 7.0000%.

12) Purchaser shall pay for any statutory commission on sale from the proceeds of sale, deed preparation, costs of recording the deed, and deed stamps.

13) 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.

14) 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. The Plaintiff, or any other party to this action, may become a purchaser at such sale, and if, upon such sale being made, the purchaser, or purchasers, should fail to comply with the terms thereof within thirty (30) days after the conclusion of the bidding, 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.

15) In the event an agent of the Plaintiff does not appear at the time of sale, the within property shall be withdrawn from sale and sold at the next available sales day upon the 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.

16) If Plaintiff is the successful bidder at the sale, for a sum not exceeding the amount of costs, expenses and 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.

17) The Master in Equity will 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 Order of Court;

NEXT: To the payment to the Plaintiff or Plaintiff's attorney of the amount of Plaintiff's debt and interest (including attorney fees) or so much thereof as the purchase money will pay on the same;

NEXT: Any surplus should be held pending further Order of this court.

18) In the event the successful bidder is other than the Defendants in possession of the subject property, upon full compliance and title by deed from the Court vested into such purchaser, and upon issuance of a Writ of Assistance by the Court, the Sheriff of Berkeley County is ordered and directed to eject and remove from the premises the occupants of the property sold, together with all personal property located thereon, and put the successful purchaser 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. All valid tenant rights shall be protected pursuant to the Protecting Tenants at Foreclosure Act of 2009.

19) In the event the successful purchaser is someone other than the Defendants in possession of the subject property, and the occupants have voluntarily vacated the property or have been ejected from the property leaving furnishings, fixtures and items not subject to Plaintiff's Mortgage is said property, and title by deed from the Court is vested into such purchaser, the Purchaser is authorized to remove from the property all furnishings, fixtures and items not subject to the lien of Plaintiff's Mortgage. The personal property, being deemed abandoned,

shall be removed by the Purchaser or its agents from the subject property by placing said property on the public street or highway or by any other means.

20) In accordance with S.C. Code Ann. §30-9-31, the deed of conveyance made pursuant to said sale shall be indexed by the R.M. C. in the name of the owner of record of subject property immediately prior to execution of the deed, as well as in the name of the Master in Equity, who executes such deed as grantor.

21) 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.

22) The following is a description of the premises herein ordered to be sold:

All that certain piece, parcel or lot of land, situate, lying and being in Phase II, Section C, of Stratford Forest Subdivision, Community of Crowfield Plantation, City of Goose Creek, Berkeley County, South Carolina, being shown and designated as Lot 5, Block M, on "Plat Showing Stratford Forest Subdivision, Phase II, Section "C", Property of Westvaco Development Corporation, Located in Crowfield Plantation, City of Goose Creek, Berkeley County, South Carolina"; made August 11, 1987, by Charles W. Shaver, SC Reg. PE & LS, which said plat is recorded August 12, 1987, in the RMC Office for Berkeley County in Plat File Cabinet G, Page 241. Said lot has such size, shape, metes, bounds, location and dimensions, as shown on said plat.

This being the same property conveyed to James R. Hamilton and Cheryl Whipper Hamilton by deed of The United States of America, dated December 29, 1994 and recorded January 5, 1995 in Book 616 at Page 200, RMC Office for Berkeley County, South Carolina. Thereafter James R. Hamilton conveyed the subject property to Cheryl Whipper Hamilton by deed recorded on March 18, 2004 in Deed Book 3888, at Page 68.

TMS No. 234-15-08-036

Property Address: 108 Brighton Court, Goose Creek, SC 29445

*Robert E. Watson*

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Honorable Robert E. Watson  
Master in Equity Berkeley County

April 29, 2013  
Moncks Corner, South Carolina

NOTICE OF SALE  
2012-CP-08-2346

BY VIRTUE of a decree heretofore granted in the case of: CitiMortgage, Inc. against Cheryl Whipper Hamilton a/ka/ Cheryl W. Hamilton a/k/a Cheryl Hamilton, James R. Hamilton, The South Carolina Department of Revenue, The United States of America, by and through its agency, the Internal Revenue Service, Crowfield Plantation Community Services Association, Inc. and Park at Rivers Edge Horizontal Property Regime A, Inc., I, the undersigned Master in Equity for Berkeley County, will sell on June 5, 2013, at 11:00 a.m. at County Courthouse in Moncks Corner, South Carolina, to the highest bidder, the following described property, to-wit:

All that certain piece, parcel or lot of land, situate, lying and being in Phase II, Section C, of Stratford Forest Subdivision, Community of Crowfield Plantation, City of Goose Creek, Berkeley County, South Carolina, being shown and designated as Lot 5, Block M, on "Plat Showing Stratford Forest Subdivision, Phase II, Section "C", Property of Westvaco Development Corporation, Located in Crowfield Plantation, City of Goose Creek, Berkeley County, South Carolina", made August 11, 1987, by Charles W. Shaver, SC Reg. PE & LS, which said plat is recorded August 12, 1987, in the RMC Office for Berkeley County in Plat File Cabinet G, Page 241. Said lot has such size, shape, metes, bounds, location and dimensions, as shown on said plat.

This being the same property conveyed to James R. Hamilton and Cheryl Whipper Hamilton by deed of The United States of America, dated December 29, 1994 and recorded January 5, 1995 in Book 616 at Page 200, RMC Office for Berkeley County, South Carolina. Thereafter James R. Hamilton conveyed the subject property to Cheryl Whipper Hamilton by deed recorded on March 18, 2004 in Deed Book 3888, at Page 68.

TMS No. 234-15-08-036  
Property Address: 108 Brighton Court, Goose Creek, SC 29445

MAY - 1 AM 11:00  
MARY P. BROWN  
CLERK OF COURTS  
BERKELEY COUNTY

TERMS OF SALE: The successful bidder, other than the plaintiff, will deposit with the Master in Equity, at conclusion of the bidding, five per cent (5%) of said bid, in cash or equivalent, as evidence of good faith, same to be applied to purchase price in case of compliance, but to be forfeited and applied first to costs and then to plaintiff's debt in the case of noncompliance. Should the successful bidder fail or refuse to make the required deposit at time of bid or comply with the other terms of the bid within thirty (30) days, then the Master in Equity may resell the property on the same terms and conditions (at the risk of the said defaulting bidder). Should the Plaintiff, or one of its representatives, fail to be present at the time of sale, the property is automatically withdrawn from said sale and sold at the next available sales day upon the terms and conditions as set forth in the Judgment of Foreclosure and Sale or any Supplemental Order. The successful bidder will be required to pay for documentary stamps on the Deed and interest on the amount of the bid from the date of sale to the date of compliance with the bid at the rate of 7.0000%.

THIS SALE IS SUBJECT TO ASSESSMENTS, COUNTY TAXES, EXISTING EASEMENTS, EASEMENTS AND RESTRICTIONS OF RECORD, AND OTHER SENIOR ENCUMBRANCES.

No personal or deficiency judgment being demanded, the bidding will not remain open after the date of sale, but compliance with the bid may be made immediately.

NOTICE: The foreclosure deed is not a warranty deed. Interested bidders should satisfy themselves as to the quality of title to be conveyed by obtaining an independent title search well before the foreclosure sale date.

*Robert E. Watson*

Honorable Robert E. Watson  
Master in Equity Berkeley County

Moncks Corner, South Carolina  
April 29, 2013

RILEY POPE & LANEY, LLC  
Attorneys for Plaintiff