





Beaufort Common Pleas

**Case Caption:** Southern First Bank , plaintiff, et al VS Kenneth J Vilcheck , defendant,  
et al  
**Case Number:** 2012CP0704253  
**Type:** Order/Other

So Ordered:

s/Marvin H. Dukes III #3069





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STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORT

Southern First Bank,

Plaintiff(s),

v.

Kenneth J. Vilcheck; Renee M. Vilcheck; Portfolio Recovery Associates, LLC; the Federal Housing Commissioner; the Department of the Treasury – Internal Revenue Service; and the South Carolina Department of Revenue,

Defendant(s).

IN THE COURT OF COMMON PLEAS  
FOR THE FOURTEENTH JUDICIAL CIRCUIT

County C/A No.: 2012-CP-07-04253

**ORDER DENYING MOTION  
FOR JUDICIAL SALE**

**RECEIVED**  
**Mar 10 2023**  
**SC Court of Appeals**

Pursuant to Circuit Court Rule 53(b) of the South Carolina Rules of Civil Procedure, the above-entitled matter was referred to the undersigned Master in Equity, Marvin H. Dukes, III, to make appropriate findings of facts and conclusions of law with authority to enter a final judgment in the cause. Pursuant to a Pending Motion discussed on a Status Conference held via phone call on January 31, 2023, a hearing was held by this Court on February 3, 2023, by WebEx with the parties' consent. At the hearing, evidence was presented and from the documents and records received into evidence by this Court, I find, conclude and order as follows:

FINDINGS

1. Plaintiff obtained a Judgment in the above captioned matter against the Defendants, Kenneth J. Vilcheck and Renee M. Vilcheck (hereinafter "the Defendants"), in the principal amount of Three Hundred Ninety-One Thousand, Two Hundred Eighty-Four Dollars and Forty-

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Six Cents (\$391,284.46), plus post judgment interest at the legal rate for judgments in the State of South Carolina, entered in Beaufort County on March 27, 2013 (the “Judgment”).

2. Upon its entry into Beaufort County, Plaintiff’s Judgment immediately attached to any of the Defendants’ real property in Beaufort County, and would immediately attach to any new real property acquired by Defendants in Beaufort County.

3. Defendants own non-exempt real property in Beaufort County, South Carolina with the address 318 Bamberg Dr., Bluffton, SC 29910 and bearing Beaufort County Parcel # R600 023 00F 0112 0000 (the “Property”). The Deed for the Property to Renee M. Vilcheck was recorded with the Lexington County Register of Deeds Office on November 25, 2020 in Book 20907 at Page 3747. The Description of the Property is as follows:

ALL that certain lot, piece or parcel of land, situate, lying and being in Belfair, Beaufort County, South Carolina, more particularly described as Lot 357, phase VI-A; said property having dimensions, metes and bounds as shown on the Plat entitled “A Plat Phase of VI-A Belfair (Lots 313-319, 319A-368)(416 -417, 434-443, 449) Beaufort County, South Carolina,” Sheet 1 of 1, said plat being prepared by Thomas & Hutton Engineering Company, Savannah, Georgia, Octavio Arango, S.C.R.L.S. #12066, said plat being dated December 30, 1996, and recorded in the Beaufort County Records in Plat Book 59 at Page 2, as revised in Plat Book 70 at Page 170. For a more detailed description as to the courses, metes and bounds of the above mentioned lot, reference is had to said plat of record.

This being the same property conveyed to Kenneth J. Vilcheck and Renee M. Vilcheck by deed of Renee M. Vilcheck a/k/a Renee Marsh Vilcheck and Kenneth Joseph Vilcheck, dated May 9, 2019, and recorded in the aforesaid records on May 16, 2019 in Book 3760, at Page 1585.

TMS# R600 023 00F 0112 0000

Street Address: 318 Bamberg Drive  
Bluffton, SC 29910

4. On January 16, 2014, a judgment was entered in favor of Portfolio Recovery Associates, LLC and against Kenneth J. Vilcheck in the amount of Twenty-Six Thousand, Four

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Hundred Ninety-Six Dollars, and Twenty-Seven Cents (\$26,496.27) at Judgment Roll 2013-CP-07-02756.

5. On July 8, 2015, the Beaufort County Register of Deeds recorded in Book 3412 at Page 2628 a deed dated June 26, 2015 conveying the Property from Bald Eagle 2, LLC (with Renee M. Vilcheck signing as Sole Member) to Renee M. Vilcheck as Trustee of the Bermuda Trust Agreement UAD November 9, 2012.

6. On July 8, 2015, the Beaufort County Register of Deeds recorded in Book 3412 at Page 2631 a deed dated June 26, 2015 conveying the Property from Renee M. Vilcheck as Trustee of the Bermuda Trust Agreement UAD November 9, 2012 to Renee M. Vilcheck.

7. On February 5, 2019, the Beaufort County Register of Deeds recorded in Book 3735 at Page 2438 a Quitclaim Deed dated February 5, 2019 conveying the Property from Renee Marsh Vilcheck to Kenneth Joseph Vilcheck and Renee Marsh Vilcheck.

8. On May 16, 2019, the Beaufort County Register of Deeds recorded in Book 3760 at Page 1585 a deed dated May 9, 2019 conveying the Property from Renee M. Vilcheck a/k/a Renee Marsh Vilcheck and Kenneth Joseph Vilcheck to Kenneth J. Vilcheck and Renee M. Vilcheck.

9. On May 16, 2019, the Beaufort County Register of Deeds recorded in Book 3760 at Page 1588 MERS for TowneBank Mortgage's Adjustable Rate Home Equity Conversion Mortgage secured by the Property dated May 9, 2019.

10. On May 16, 2019, the Beaufort County Register of Deeds recorded in book 3760 at Page 1607 the Federal Housing Commissioner's Adjustable Rate Home Equity Conversion Second Mortgage secured by the Property, dated May 9, 2019.

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11. On October 8, 2019, the Beaufort County Register of Deeds recorded in Book 141 at Page 951 the Department of the Treasury – Internal Revenue Service’s Notice of Federal Tax Lien on the Property in the amount of Two Hundred Eighty-Five Thousand, Seven Hundred Ninety-Nine Dollars and Zero Cents (\$285,799.00).

12. On June 12, 2020; April 10, 2020; and June 10, 2022 the South Carolina Department of Revenue filed state tax liens against both Defendants as follows:

<b>LIEN ID:</b>	<b>LIEN AMOUNT:</b>	<b>DATE FILED:</b>
863513	\$1,373.93	06/12/2020
802729	\$18,723.30	04/10/2021
949023	\$2,084.34	06/10/2022

13. On July 7, 2021, the Beaufort County Register of Deeds recorded in Book 4034 at Page 1582 an assignment of TowneBank Mortgage’s mortgage to Longbridge Financial, LLC.

14. On October 21, 2022, the Plaintiff moved for this Court to issue an order applying the Property towards satisfaction of the Judgment by selling such property at auction according to South Carolina Law, as well as to have joined all necessary parties for such an order.

15. On November 7, 2022, the Court issued an order joining as parties Portfolio Recovery Associates, LLC; Longbridge Financial, LLC; The Federal Housing Commissioner; the Department of the Treasury – Internal Revenue Service; and the South Carolina Department of Revenue.

16. On November 28, 2022, a Notice of the Defendants’ Appeals of this Court’s Order denying the Defendants’ Rule 60 Motion and Order to Join parties was filed in this matter.

17. On December 15, 2022, Defendant, the United States of America, by and through its agency, the Internal Revenue Service, filed an answer in which it stated “This Defendant

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consents to reference to a Master-in-Equity or Special Referee of Plaintiff's choosing under such terms as Plaintiff deems appropriate. WHEREFORE, the defendant, United States of America, on behalf of its agency, Internal Revenue Service, prays that its lien(s) be prioritized and satisfied from the sale proceeds, that its statutory right of redemption, 28 U.S.C. § 2410(c), be protected.”

18. On December 21, 2022, Defendant, the South Carolina Department of Revenue (“Department”) filed an answer in which it stated that “The Department consents to reference to a Master-in-Equity or Special Referee of Plaintiff’s choosing under such terms as Plaintiff deems appropriate”; that “the Department requests notice of any surplus funds”; and that “the Department, having fully answered the Complaint, prays that the Court protect any interest the Department might have in the subject property”.

19. On December 28, 2022, Longbridge Financial, LLC filed a motion to be dismissed from the matter.

20. On January 20, 2023, Defendant, the United States of America, by and through its agency, the Department of Housing and Urban Development, filed an answer in which it stated: “the defendant, United States of America, on behalf of its agency, Department of Housing and Urban Development, prays that: (1) That this Court inquire into the matters set forth herein and protect the interest of the United States of America as set forth in this Answer; (2) That the mortgage lien of the United States of America be afforded its proper priority as provided by law; and (3) That this court inquire into the matter set forth herein and if the property herein be sold, it be sold for free and clear of all liens and encumbrances. Since the mortgage lien of the United States of America derives from issuance of insurance under the National Housing Act, any federal right of redemption under 28 U.S.C. § 2410(c) is deemed waived by 12 U.S.C. 1701k, and (4) That the United States be afforded such other and further relief as the Court deems just and proper.”

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21. On February 3, 2023, the Court held a hearing on all pending motions in this case, and the Court granted the motion of Longbridge Financial, LLC, such that they are not now a party to this case.

22. Pursuant to S.C. Code § 30-7-10, et seq., the Plaintiff's Judgment lien on the property is senior to all other defendants made a party hereto.

23. The Property is Defendants' primary residence, and, if sold, Defendants are therefore entitled to the Homestead Exemption provided in S.C. Code §15-41-30, which as of the date the Property is to be sold will be One Hundred Thirty-Four Thousand, One Hundred Seventy-Five Dollars and Zero Cents (\$134,175.00).

24. Other than as discussed below, neither Defendants nor any other party have shown cause as to why Defendants' real property should not be applied toward satisfaction of the Judgment by selling such property at auction according to South Carolina law.

25. Defendants contend that this proceeding is barred because "there is (1) another action pending, (2) between the same parties, (3) for the same claim" when the claim is precisely or substantially the same in both proceedings[.]" Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 674 S.E.2d 524, 531-32 (Ct. App. 2009). This is the same argument the Defendants offered in opposition to the Plaintiff's motion to join parties, and the court ruled against that argument.

26. Defendants contend, as a result of their appeal of the order joining parties, that the hearing should not have been held and that the Plaintiff's motion for the sale subject of this order is stayed. The Defendants moved before the Court of Appeals for an order directing this Court not to proceed with the hearing on the Plaintiff's motion. The Honorable H. Bruce Williams, Chief Judge of that court, denied that motion. The Defendants sought review of that denial by the full

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Court of Appeals, which denied their motion seeking full review on February 6, 2023, and concurrently dismissed their appeal as to the order joining parties.

27. The Plaintiff seeks sale of the Property in execution of its judgment. The Court rules that, but for the imminent expiration of the judgment and the inability to complete the execution during the judgment's period of active energy, the Plaintiff would be entitled to have the Property sold in execution to be conducted as provided in S.C. Code Ann. §§ 15-39-610 through -900. For the reasons discussed below, the execution sought by the Plaintiff cannot be completed during the time in which the judgment has active energy.

28. Our state Supreme Court has made it plain that judgments in South Carolina cannot be enforced more than 10 years<sup>1</sup> after they are rendered, even if that time limit expires during the pendency of proceedings to enforce the judgment. Gordon v. Lancaster, 425 S.C. 386, 823 S.E.2d 173 (2018). "The lien of a judgment is absolutely extinguished and ended after the expiration of ten years from the date of entry." Garrison v. Owens, 258 S.C. 442, 446-47, 189 S.E.2d 31 (1972). If a judgment's 10-year duration expires before the collection proceedings are complete, no matter how close they might be to complete, the collection proceedings stop because the expiration of the judgment has made collection efforts moot. Garrison, 258 S.C. at 446-47.

29. Property taken in execution of a judgment has to be sold, absent consent of the judgment debtor, and the proceeds applied to the judgment debt. S.C. Code Ann. §§ 15-39-610 & -630. In a sale in execution of a judgment, the law provides as follows:

***In all* judicial sales of real estate for the foreclosure of mortgages and *sales in execution* the bidding shall not be closed upon the**

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<sup>1</sup> Section 15-39-30 provides: "Executions may issue upon final judgments or decrees at any time within ten years from the date of the original entry thereof and shall have active energy during such period, without any renewal or renewals thereof, and this whether any return may or may not have been made during such period on such executions." Gordon v. Lancaster, 425 S.C. 386, 823 S.E.2d 173 (S.C. 2018)

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**day of sale but shall remain open until the thirtieth day after such sale, exclusive of the day of sale.**

...

**The bidding shall be reopened by the officer making the sale on the thirtieth day after the sale, exclusive of the day of the sale, at eleven o'clock in the forenoon and the bidding shall be allowed to continue until the property shall be knocked down in the usual custom of auction to the successful highest bidder complying with the terms of sale. The sales officer shall announce the sales about to be closed and shall receive the final bids in such sales in the order determined by him.**

S.C. Code Ann. § 15-39-720 (emphasis added). “Ordinarily, the use of the word ‘shall’ in a statute means that the action referred to is mandatory.” S.C. Dept. of Hwys. & Pub. Transp. v. Dickinson, 288 S.C. 189, 191, 341 S.E.2d 134 (1986). A plain reading of S.C. Code Ann. § 15-39-720 reveals that its provisions concerning holding the bidding open for 30 days to receive upset bids are mandatory. Id.

30. Here, the lien and active energy of the judgment at issue expires on March 27, 2023. The next judicial sales day is March 6, 2023, and there is time to advertise the sale for three weeks before that sales day, as required by S.C. Code Ann. § 15-39-650. Accordingly, the key question before this Court is whether the contemplated judicial sale would be completed on March 6, 2023 – before the judgment expires – or on April 5, 2023, which would be after the judgment expires. If the judgment expires before the completion of the sale, the execution process simply ends without the sale being completed. Gordon, 425 S.C. at 386; Garrison, 258 S.C. at 446-47.

31. Only one case appears to speak directly to the question of when a sale with required upset bidding under S.C. Code Ann. § 15-39-720 is completed, In re: Riverfront Properties, LLC, 405 B.R. 570 (Bankr. S.C. 2009). Riverfront Properties notes the established rule that a judicial

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sale “is over when the hammer falls.” Id. at 573. As the court there explains, in a sale with upset bidding, the sale is complete when the upset bidding period closes. Id. at 574.

Because the bidding is reopened, **the hammer does not fall** on a foreclosure sale when deficiency judgment is not waived **until the sales officer closes the sale on the thirtieth day**. The high bidder on the first day of sale has no right that cannot be extinguished by a subsequent bidder and thus no rights or obligations arise in the first day bidder that diminish the title of the mortgagor [or judgment debtor].

Id. (emphasis added).

32. Here, because the judgment’s lien and active energy will expire before the sale can be completed, the execution cannot be completed and the judicial sale process cannot be carried to its conclusion. Gordon, 425 S.C. at 386; Garrison, 258 S.C. at 446-47; Riverfront Properties, 405 B.R. at 574; S.C. Code Ann. § 15-39-720.

33. Courts do not ordinarily issue orders permitting futile acts, even when the requesting party would otherwise be entitled to what is requested. Skydive Myrtle Beach, Inc. v. Horry Cnty., 426 S.C. 175, 182, 826 S.E.2d 585 (2019) (proper to deny request to amend pleadings when amendment would be futile). It would be futile to grant the Plaintiff’s motion here. The expiration of the judgment will make the execution sales proceedings moot before the hammer can fall on the requested sale. Gordon, 425 S.C. at 386; Garrison, 258 S.C. at 446-47; Riverfront Properties, 405 B.R. at 574; S.C. Code Ann. § 15-39-720.

IT IS, ACCORDINGLY, ORDERED that the Plaintiff’s motion for a sale of the Property is denied.

AND IT IS SO ORDERED.

**[ELECTRONIC SIGNATURE TO FOLLOW]**

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