

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

Founders Federal Credit Union,

Plaintiff,

vs.

Kimberly Boone a/k/a Kimberley Boone a/k/a
Kimberley D. Boone f/k/a Kimberly Dawley
f/k/a Kimberley Dawley, Brian Lemon, Crystal
Lemon, Bank of America, N.A., Discover
Bank and Mortgage Electronic Registration,
Inc.,

Defendants.

IN THE CIRCUIT COURT

Case No. 2023-CP-29-00113

**ORDER DENYING DEFENDANT
BOONE'S MOTION TO DISMISS**

RECEIVED
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SC Court of Appeals

THIS MATTER COMES BEFORE THE COURT upon the *Notice and Motion to Dismiss Complaint* (“Motion”) filed by Defendant Kimberly Boone a/k/a Kimberley Boone a/k/a Kimberley D. Boone f/k/a Kimberly Dawley f/k/a Kimberley Dawley (“Defendant Boone”) on February 27, 2023, seeking dismissal of Plaintiff’s Complaint under Rule 12(b)(1) and (b)(6), SCRPC.¹ The Honorable Brian M. Gibbons presided over a hearing on the Motion on April 26, 2023. In attendance at the hearing were Suzanne Graham Grigg, attorney for Founders Federal Credit Union and J. Martin Foster, attorney for Defendant Boone. Based on the arguments of counsel and pleadings filed herein, the Court denies the Motion.

BACKGROUND

Plaintiff Founders Federal Credit Union (“Founders”) commenced this judgment-lien foreclosure action on January 23, 2023, filing its Summons and Complaint and Lis Pendens.

¹ On April 24, 2023, Defendant Boone filed her Brief on Motion to Dismiss Complaint (“Plaintiffs’ Memorandum” together with the Motion, the “Motion to Dismiss”).

Founders' Complaint alleges that it obtained a judgment against Defendant Boone, recorded on July 1, 2013 in the Lancaster County Clerk of Court's Office, in the original principal amount of \$19,670.35, which was then transcribed in the Chester County Clerk of Court's Office on January 4, 2023 (Compl. ¶ 12). When the judgment was recorded in Lancaster County, the judgment attached as a lien to a property co-owned by Defendant Boone and Jason Boone at that time. (Compl. ¶¶ 14 & 18). When the judgment was transcribed in Chester County, the judgment attached as a lien to a property currently owned by Defendant Boone. (Compl. ¶¶ 20 & 22). The judgment lien remains unpaid. (Compl. ¶ 33).

On February 27, 2023, Defendant Boone filed her Motion, seeking to dismiss Founders' Complaint on the grounds that Founders fails to state a claim upon which relief may be granted and this Court lacks subject matter jurisdiction. On April 25, 2023, Founders filed its Memorandum in Opposition to Defendant Boone's Motion to Dismiss, asserting that its Complaint does, in fact, state a valid cause of action for judgment-lien foreclosure and the Court has proper subject matter jurisdiction.

At the hearing, in addition to the arguments set forth in the Motion, Defendant Boone argued that Founders could not pursue foreclosure of its judgment lien unless and until it followed a separate process. Further, Defendant Boone argued that it would be inequitable to allow Founders to pursue foreclosure of its judgment lien.

LEGAL STANDARDS

1. SCRCP 12(b)(1)

“Subject matter jurisdiction refers to the court's power to hear and determine cases of the general class to which the proceedings in question belong.” *Watson v. Watson*, 319 S.C. 92, 93, 460 S.E.2d 394, 395 (1995) (internal quotation marks and citations omitted). Where property

foreclosed is located in South Carolina, courts in this state have subject matter jurisdiction. *Fed. Land Bank of Columbia v. Davant*, 292 S.C. 172, 178, 355 S.E.2d 293, 296 (Ct. App. 1987) (citing *Greenwood Loan & Guarantee Association v. Williams*, 71 S.C. 421, 51 S.E. 272 (1905)).

2. SCRCP 12(b)(6)

“A motion to dismiss pursuant to Rule 12(b)(6) must be based solely on the allegations set forth in the complaint and [the Court] must presume all well-pled facts to be true.” *Gressette v. S.C. Elec. & Gas Co.*, 370 S.C. 377, 378-79, 635 S.E.2d 538, 538-39 (2006). “The motion will not be sustained if the facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case. A judgment on the pleadings is considered to be a drastic procedure by our courts. Therefore, pleadings in a case should be construed liberally and the Court must presume all well pled facts to be true so that substantial justice is done between the parties.” *Overcash v. S.C. Elec. And Gas Co.*, 364 S.C. 569, 572, 614 S.E.2d 619, 620 (2005) (internal quotation marks and citations omitted). “The question to be considered is whether, when viewed in the light most favorable to the plaintiff, the complaint states any valid claims for relief.” *Carolina Care Plan, Inc. v. United HealthCare Serv., Inc.*, 361 S.C. 544, 550, 606 S.E.2d 752, 755 (2004).

DISCUSSION

After careful consideration and review of the pleadings, argument of the parties, and applicable case law, this Court denies Defendant Boone’s Motion because this Court, even upon referral to the Master-In-Equity, has subject matter jurisdiction and Founders’ Complaint states a valid claim for relief under South Carolina law.

Founders’ Complaint sufficiently alleges proper subject-matter jurisdiction by this Court

(or the Master-In-Equity upon referral).² Where property foreclosed is located in South Carolina, courts in this state have subject matter jurisdiction. *Fed. Land Bank of Columbia v. Davant*, 292 S.C. 172, 178, 355 S.E.2d 293, 296 (Ct. App. 1987) (citing *Greenwood Loan & Guarantee Association v. Williams*, 71 S.C. 421, 51 S.E. 272 (1905)). Founders' Complaint alleges that the subject properties are located in South Carolina. (Compl. ¶¶ 17 & 21). Additionally, as upon entry by the Court of Founders' Motion for Order of Reference, the Master-In-Equity or Special Referee will have subject matter jurisdiction. *See Combs v. Combs*, No. 2008-UP-003, 2008 WL 9832821, at *2 (S.C. Ct. App. Jan. 2, 2008) ("The Master-in-Equity is considered a division of the circuit court and obtains jurisdiction through an order of reference from the circuit court." (citations omitted)); *see also* SCRCP 71(a) ("Actions to foreclose liens . . . shall be tried by the court, and shall ordinarily be referred to a master pursuant to Rule 53.").

Moreover, Founders' Complaint alleges facts which are sufficient to state a cause of action for judgment-lien foreclosure under South Carolina law. South Carolina courts have routinely recognized judgment-lien foreclosure actions as a means of recovery for judgment creditors. *See Inglese v. Beal*, 403 S.C. 290, 296, 742 S.E.2d 687, 690 (Ct. App. 2013) (recognizing that a judgment creditor may foreclose its judgment lien if the lien is not released); *see also S.C. Nat. Bank v. Cook*, 291 S.C. 530, 531, 354 S.E.2d 562, 562 (1987) (affirming circuit court order granting summary judgment in favor of bank on judgment-lien foreclosure claim); *see also McMasters v. Charpia*, No. 2017-000834, 2020 WL 6194025, at *1 (S.C. Ct. App. Sept. 30, 2020) (finding that Plaintiff "obtained a judgment against [Defendant], which made [Defendant] subject to the foreclosure of [Plaintiff's] judgment lien").

² In addition to the hearing on Defendant Boone's Motion to Dismiss, the Court conducted a hearing on Founders' Motion for Order of Reference, which the Court stated it would grant depending on the outcome of the Motion.

Here, Founders alleges that it obtained a judgment against Defendant Boone in Lancaster County on July 1, 2013, which remains attached as a lien to a property co-owned by Defendant Boone and Jason Boone at that time. (Compl. ¶¶ 12, 14, & 18). Founders further alleged that it transcribed the judgment to Chester County, where the judgment attached as a lien to a property currently owned by Defendant Boone. (Compl. ¶¶ 20 & 22). These allegations are sufficient to state a claim for the relief sought in Founders' Complaint. The Court is not aware of any additional process or procedure required before pursuing foreclosure of a judgment lien.

CONCLUSION

In short, the facts alleged by Founders are sufficient to state a judgment-lien foreclosure claim against Defendant Boone and subject matter jurisdiction is proper.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant Boone's Motion to Dismiss, pursuant to Rule 12(b)(1) and (b)(6), SCRCP, is denied;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there is no other process or procedure with which Founders must comply prior to prosecuting a judgment lien foreclosure action;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court shall enter a separate Order referring the case to a special referee;

AND IT IS SO ORDERED.

_____, 2023

Brian M. Gibbons
Circuit Court Judge



Lancaster Common Pleas

Case Caption: Founders Federal Credit Union VS Kimberly Boone , defendant, et al

Case Number: 2023CP2900113

Type: Order/Other

So Ordered

s/Brian M. Gibbons #2168 Circuit Judge