

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.,¹

Defendants.

IN THE CIRCUIT COURT

Case No. 2023-CP-29-00113

SPECIAL REFEREE'S ORDER AND JUDGMENT OF FORECLOSURE AND SALE

(Foreclosure of Judgment Lien)

RECEIVED

Jun 20 2023

SC Court of Appeals

Pursuant to Rule 53 SCRPC, the above-entitled matter was referred to the undersigned as Special Referee to make appropriate findings of fact and conclusions of law with authority to enter a final judgment in this cause. Appeal from this Order is to the South Carolina Court of Appeals.

Pursuant to the Order of Reference granted in the above-entitled case, a hearing was held before me on May 30, 2023. In attendance at the hearing were Suzanne Graham Grigg, attorney for Founders Federal Credit Union ("Plaintiff or FFCU") and J. Martin Foster, attorney for Defendant Boone. Jeanne Barton attended the hearing and testified on behalf of Plaintiff. Kimberly Boone attend the hearing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The *Summons*, *Verified Complaint* and *Lis Pendens* were filed by Plaintiff in the Office of the Clerk of Court for Lancaster County on January 26, 2023.

2. An *Affidavit of Service* evidencing service of the foregoing documents upon 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 January 27, 2023 was filed on January

¹¹ Defendants Brain Lemon, Crystal Lemon, Bank of America, N.A., Discover Bank and Mortgage Electronic Registration, Inc. (collectively, the "Released Parties") shall be dismissed from this lawsuit upon compliance with terms reached in a separate settlement. On May 25, 2023, the parties participated in a mediation that resulted a partial settlement of this lawsuit specifically involving the Lancaster County property, as defined in the Complaint. The mediation did not result in a settlement between the Plaintiff and Defendant Boone.

30, 2023, in the Office of the Clerk of Court for Lancaster County.

3. On February 27, 2023, counsel for Defendant Boone filed a *Notice and Motion to Dismiss Complaint* (“Motion to Dismiss”) in the Office of the Clerk of Court for Lancaster County.

4. On March 20, 2023, Plaintiff filed a *Notice of Motion and Motion for Order of Reference* (the “Motion to Refer”) in the Office of the Clerk of Court for Lancaster County.

5. On April 12, 2023, a *Notice of Hearing* was filed in the Office of the Clerk of Court for Lancaster County and a hearing on Defendant’s Motion to Dismiss and Plaintiff’s Motion to Refer was held on April 26, 2023.

6. On April 24, 2023, counsel for Defendant Boone filed a *Brief on Motion to Dismiss Complaint* in the Office of the Clerk of Court for Lancaster County.

7. On April 25, 2023, Plaintiff filed a *Memorandum in Opposition to Defendant Boone’s Motion to Dismiss* in the Office of the Clerk of Court for Lancaster County.

8. On April 27, 2023, an *Order/Form 4* was filed in the Office of the Clerk of Court for Lancaster County whereby the Court denied the Defendant's Motion to Dismiss and granted Plaintiff's Motion to Refer this matter to the special referee. The Court further directed counsel for Plaintiff to submit a more formal order to the Court, consistent with the arguments made, within 10 days.

9. On May 3, 2023, an *Order Denying Defendant’s Motion to Dismiss* was filed in the Office of the Clerk of Court for Lancaster County.

10. On May 3, 2023, an *Order of Reference* was filed in the Office of the Clerk of Court for Lancaster County, referring this matter to me as Special Referee for Lancaster County.

11. On May 8, 2023, counsel for Defendant Boone filed a *Notice and Motion to Alter or Amend Judgment* (the “Motion to Alter or Amend”) in the Office of the Clerk of Court for Lancaster County.

12. The *Affidavit of Default and Non-Military Service as to Kimberley Dawley Boone* was filed in the Office of the Clerk of Court for Lancaster County on May 26, 2023.

13. On May 27, 2023, counsel for Defendant Boone filed a *Notice and Motion to Enlarge Time* (“Motion to Enlarge Time”) in the Office of the Clerk of Court for Lancaster County.

14. On May 30, 2023, Plaintiff filed a *Memorandum in Support of Default* in the Office of the Clerk of Court for Lancaster County.

15. On May 30, 2023, the Honorable Brian M. Gibbons presided over a hearing

Handwritten signature and initials, possibly reading 'B2'.

(virtual) on Defendant's Motion to Alter or Amend. Shortly after the conclusion of the hearing, Judge Gibbons issued an email announcing his ruling denying the Motion to Alter or Amend. Formally, on May 30, 2023, Judge Gibbons entered the *Order Denying Defendant Boone's Motion to Alter or Amend Judgment Pursuant to Rule 59(A), SCRPC*. In accordance with the *Order of Reference*, I presided over the Motion to Enlarge Time, and the underlying foreclosure hearing. Concluding that Rule 59(e), SCRPC did not toll the answer deadline in Rule 12(a), SCRPC, I denied the motion. As Defendant Boone failed to file an answer within fifteen (15) days from the denial of the motion to dismiss, I further ruled that Defendant Boone was in default.

16. As set forth in the pleadings and as Mrs. Barton testified, Founders obtained a judgment against the Defendant pursuant to an *Order for Judgment* recorded in the Lancaster County Clerk of Court's Office on July 1, 2013, Judgment No. 2013-CP-29-00607, in the original principal amount of \$19,670.35 (the "Judgment"). Interest on the Judgment has accrued at the contract rate from July 1, 2013, and interest continues to accrue at the contract rate.

17. Founders is the owner and the holder of the Judgment.

18. Subsequent to recordation of the Judgment, Founders transcribed the Judgment to Chester County. At the time the *Transcript of Judgment* was recorded in Chester County, Defendant Boone was, and currently is, the owner, of real property located in Chester County, South Carolina (the "Subject Property") described hereinbelow, pursuant to a *General Warranty Deed* recorded in the Clerk of Court for Chester County on February 23, 2022, in Deed Book 1374 at Page 62 (the "Deed"). A true copy of the Deed is attached to the Complaint, and it is incorporated herein by reference.

19. The Subject Property is described as follows:

All that piece, parcel or lot of land with dwelling house and all other improvements thereon, lying, being and situate in the Town of Fort Lawn, County of Chester, State of South Carolina, on the Old Fort Lawn to Rock Hill Highway, and being bounded on the west by said highway, now known as Willowbrook Street, on the north by lands N/F of W.F. Day, on the east by lands N/F of W.F. Day and lands N/F of Deloree C. Crawford and on the south by lands N/F of Holiday, Inc. and thereafter shown on that certain plat prepared for Tommy Cunningham by Arthur E. White, Jr. RLS #14196 dated August 28, 1995 and recorded in Book 1 at Page 659 and having such metes and bounds as reference to said plat will show, all measurements being a little more or less.

AM
13
3

DERIVATION: Being the same property conveyed to Kimberley Boone by deed recorded February 23, 2022 in Book 1374 at Page 62 in the Clerk of Court for Chester County, South Carolina.

TMS No: 203-01-10-003-000

ADDRESS: 5738 Willowbrook Street, Fort Lawn, South Carolina 29714

20. Founders' Judgment attached to the Subject Property at the time of its recordation in Chester County on January 4, 2023.

21. The Founders' Judgment is a valid enforceable lien against the Subject Property (the "Judgment Lien").

22. I conclude that Founders is entitled to foreclose its Judgment Lien against the Subject Property, and to have the Subject Property sold at a foreclosure sale at a date and time to be determined by the Court. Proceeds from the sale of the Subject Property should be paid to all parties claiming an interest in the Subject Property in the order of priority, after a determination by the Court of the order of priority of any claims against the sales proceeds.

23. It further appears to the Court that Founders is entitled to recover its attorneys' fees and costs incurred in the prosecution of this action to enforce its Judgment Lien.

24. It further appears to the Court that Founders holds a superior judgment lien against the Subject Property, and Founders is entitled to priority in so much of the net sale proceeds, after payment of the costs, expenses and attorneys' fees incurred in the prosecution of this action, to satisfy the amount, including the principal balance plus accrued interest, due and owing on the Judgment. Should the net sales proceeds be insufficient to fully satisfy the Judgment, the amount of the Judgment will be reduced accordingly, and the Judgment will remain in full force and affect as to the remaining amount due and owing, until fully satisfied.

25. Founders has performed a title search in the Chester County records for the Subject Property, and Founders is informed and believes that there are no other lienholders or parties of record who may claim an interest in the Subject Property, or the proceeds realized from the sale of the Subject Property.

26. There is now due and owing to Plaintiff by Defendant Boone, the following amounts on the Judgment:

Amount of Judgment dated July 1, 2013

\$ 19,670.35

AM
#4

Accrued Interest at 7.25% per annum (from July 1, 2013, through May 30, 2023)	\$ 19,703.11
Attorneys' Fees and Costs (Allowed by the Court)	\$ 28,191.95
TOTAL DEBT AS OF MAY 30, 2023	\$67,565.41²

27. Defendant Boone shall, on or before the date of sale of the property hereinafter described, pay to Plaintiff's attorney the amount of Plaintiff's debt as determined, together with the costs and expenses of this action.

28. On default of payment at or before the time herein indicated, the Subject Property, as hereinafter set forth, shall be sold by the undersigned, or his agent, at public auction, at Lancaster, 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 the next Tuesday succeeding such holiday), on the following terms, that is to say:

(a) FOR CASH: The purchaser at sale shall deposit of 5% on the amount bid (in cash or equivalent), the 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 and any surplus pending further order of the Court.

(b) Interest on the balance of the bid shall be paid through the day of compliance at the statutory rate.

(c) The sale shall be subject to the taxes and assessments due on the day of such sale, and existing easements and restrictions of record.

(d) Purchaser shall pay for the preparation of the deed and costs of recording the deed.

29. 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 Special Referee only the amount of the costs and expenses, crediting the balance of the bid on Plaintiff's indebtedness.

30. Unless payment in full of the foregoing amount is received, the Judgment will remain in full force and effect, and will be reduced only by the net sales proceeds to the Plaintiff,

² Upon payment of the settlement amount from the Released Parties, the total judgment amount shall be reduced by \$7,000.00.



or by the net credit bid allowance (less costs to the Special Referee), if the Plaintiff is the successful bidder at the sale.

31. As this is a judicial lien foreclosure action, the bidding will not remain open and the sale will close on the day of the sale. Any proceeds realized from the sale of the property will be used and applied to reduce the amount of the judgment.

32. The Special Referee will, by advertisement according to law, give notice of the time and place of sale, and the terms thereof, and will execute to the purchaser, or purchasers, a deed to the realty sold. 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 twenty (20) days after date of sale, then the Special Referee may advertise the said property for sale on the next, or some other subsequent sales day, at the risk of the former highest bidder, and so from time to time thereafter until a full compliance shall be secured.

33. The Special Referee shall apply the proceeds of the sale as follows:

First: Applied to the costs and expenses of this action;

Second: To the payment of attorneys' fees and costs incurred by Founders in the prosecution of this action;

Third: To the payment and discharge of Defendant Boone's homestead exemption and properly perfected liens in the order or priority as determined by the Court;

Fourth, to the payment of Founders for the Judgment debt; and,

Finally, the surplus, if any, be distributed according to law.

It is further ORDERED that in the event the successful bidder is other than Defendant Boone, and if a Writ of Assistance is presented, the Sheriff of Lancaster County is ordered and directed to eject and remove any occupant(s) of the property, together with all personal property located thereon, and put the successful bidder or his assigns in peaceable possession.

34. And it is further ORDERED, ADJUDGED AND DECREED that the Defendant, and all persons claiming under the Defendant be forever barred and foreclosed of all right, title, interest, and equity of redemption in the said Subject Property so sold, or any part thereof.

35. IT IS FURTHER ORDERED that, pursuant to S.C. Code Ann. § 30-9-31 (Supp. 1987), the deed of conveyance made pursuant to said sale shall be indexed in the grantor index by the Register of Deeds in the name of the owner of record of the Subject Property immediately prior



to execution of the deed, as well as in the name of the Special Referee for Lancaster County, who executes such deed as grantor.

36. The Special Referee will retain jurisdiction to do all the necessary acts incidental to this foreclosure including, but not limited to, the issuance of a Writ of Assistance and disposing of any surplus funds pursuant to Rule 71 (c), SCRCF.

37. The Subject Property to be sold is described as follows:

All that piece, parcel or lot of land with dwelling house and all other improvements thereon, lying, being and situate in the Town of Fort Lawn, County of Chester, State of South Carolina, on the Old Fort Lawn to Rock Hill Highway, and being bounded on the west by said highway, now known as Willowbrook Street, on the north by lands N/F of W.F. Day, on the east by lands N/F of W.F. Day and lands N/F of Deloree C. Crawford and on the south by lands N/F of Holiday, Inc. and thereafter shown on that certain plat prepared for Tommy Cunningham by Arthur E. White, Jr. RLS #14196 dated August 28, 1995 and recorded in Book 1 at Page 659 and having such metes and bounds as reference to said plat will show, all measurements being a little more or less.


DERIVATION: Being the same property conveyed to Kimberley Boone by deed recorded February 23, 2022 in Book 1374 at Page 62 in the Clerk of Court for Chester County, South Carolina.

TMS No: 203-01-10-003-000

ADDRESS: 5738 Willowbrook Street, Fort Lawn, South Carolina 29714

38. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that if Plaintiff or Plaintiff's representative does not appear at the scheduled sale of the above-described property, then the sale of the property will be null, void and of no force and effect. In such event, the sales will be rescheduled for the next available sales day.

AND IT IS SO ORDERED.



The Honorable S. Jackson Kimball
Special Referee for Lancaster County

June 2, 2023

47

FORM 4

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

JUDGMENT IN A CIVIL CASE

Founders Federal Credit Union

CASE NO. 2023-CP-29-00113

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

PLAINTIFF(S)

DEFENDANT(S)

<p>Submitted by: Suzanne Taylor Graham Grigg, Esq. MAYNARD NEXSEN PC 1230 Main Street, Suite 700 (29201) Post Office Box 2426 Columbia, South Carolina 29202 Telephone: 803-771-8900 Facsimile: 803-253-8277</p>	<p>Attorney for : <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant</p>
---	--

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.
- 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
- 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 : This is a foreclosure of a judgment lien.

INFORMATION FOR THE PUBLIC 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
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

Legal Description:

All that piece, parcel or lot of land with dwelling house and all other improvements thereon, lying, being and situate in the Town of Fort Lawn, County of Chester, State of South Carolina, on the Old Fort Lawn to Rock Hill Highway, and being bounded on the west by said highway, now known as Willowbrook Street, on the north by lands N/F of W.F. Day, on the east by lands N/F of W.F. Day and lands N/F of Deloree C. Crawford and on the south by lands N/F of Holiday, Inc. and thereafter shown on that certain plat prepared for Tommy Cunningham by Arthur E. White, Jr. RLS #14196 dated August 28, 1995 and recorded in Book 1 at Page 659 and having such metes and bounds as reference to said plat will show, all measurements being a little more or less.

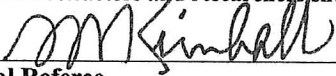
DERIVATION: Being the same property conveyed to Kimberley Boone by deed recorded February 23, 2022 in Book 1374 at Page 62 in the Clerk of Court for Chester County, South Carolina.


TMS No: 203-01-10-003-000

ADDRESS: 5738 Willowbrook Street, Fort Lawn, South Carolina 29714

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 or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.


Special Referee


Judge/Code

3/25/19
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Suzanne Taylor Graham Grigg
MAYNARD NEXSEN PC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29202
Telephone: 803-771-8900
Fax: 803-253-8277

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:



Lancaster Common Pleas

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

Case Number: 2023CP2900113

Type: Special Referee/Order/Foreclosure and Sale & Form 4

Jeff Hammond

Jeff Hammond