

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

Founders Federal Credit Union,

Plaintiff,

vs.

Richard O. Gardner, III,

Defendant.

IN THE CIRCUIT COURT

Case No. 2022-CP-29-01298

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

**RECEIVED**

**Jun 20 2023**

**SC Court of Appeals**

THIS MATTER COMES BEFORE THE COURT upon the *Notice and Motion to Dismiss Complaint* (“Motion”) filed by Defendant Richard O. Gardner, III (“Defendant Gardner”) on December 6, 2022, seeking dismissal of Plaintiff’s Complaint under Rule 12(b)(1) and (b)(6), SCRCP.<sup>1</sup> The Honorable Brian M. Gibbons presided over a hearing on the Motion to Dismiss 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 Gardner. Based on the arguments of counsel and pleadings filed herein, the Court denies the Motion to Dismiss.

**BACKGROUND**

Plaintiff Founders Federal Credit Union (“Founders”) commenced this judgment-lien foreclosure action on October 13, 2022, filing its Summons and Complaint and Lis Pendens. Founders’ Complaint alleges that it obtained a judgment against Defendant Gardner, entered in the Lancaster County Magistrate’s Court on July 15, 2013, and enrolled by the Lancaster County Clerk of Court on July 31, 2013, in the original principal amount of \$7,580.00 (Compl. ¶ 8). The judgment attached as a lien to a property owned by Defendant Gardner in Lancaster County, which

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<sup>1</sup> On April 24, 2023, Defendant Gardner filed his Brief on Motion to Dismiss Complaint (“Plaintiffs’ Memorandum” together with the Motion, the “Motion to Dismiss”).

Defendant Gardner still owns. (Compl. ¶ 12). The judgment lien remains unpaid. (Compl. ¶ 22).

On December 6, 2022, Defendant Gardner filed his 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 Gardner'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 Gardner argued that Founders could not pursue foreclosure of its judgment lien unless and until it followed a separate process. Further, Defendant Gardner 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 Gardner’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).<sup>2</sup> 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 property is located in South Carolina. (Compl. ¶ 10). Additionally, 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

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<sup>2</sup> In addition to the hearing on Defendant Gardner’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.

\*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”).

Here, Founders alleges that it obtained a judgment against Defendant Gardner on July 15, 2013, which remains attached as a lien to a property owned by Defendant Gardner in Lancaster County. (Compl. ¶¶ 8, 12, & 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 Gardner and subject matter jurisdiction is proper.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant Gardner'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

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Brian M. Gibbons  
Circuit Court Judge



Lancaster Common Pleas

**Case Caption:** Founders Federal Credit Union VS Richard O. Gardner III

**Case Number:** 2022CP2901298

**Type:** Order/Other

So Ordered

s/Brian M. Gibbons #2168 Circuit Judge