

Jun 20 2023

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

**SPECIAL REFEREE'S ORDER
AND JUDGMENT OF FORECLOSURE
AND SALE**

(Foreclosure of Judgment Lien)

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, as Special Referee, 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 Gardner. Jeanne Barton attended the hearing and testified on behalf of Plaintiff. Susan Gardner attend the hearing on behalf of her husband.

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 October 13, 2022.

2. An *Affidavit of Service* evidencing service of the foregoing documents upon Defendant Richard O. Gardner, III ("Defendant Gardner") on October 24, 2022 was filed on November 1, 2022, in the Office of the Clerk of Court for Lancaster County.

3. On December 6, 2022, counsel for Defendant Gardner filed a *Notice and Motion to Dismiss Complaint* in the Office of the Clerk of Court for Lancaster County.

4. On March 17, 2023, Plaintiff filed a *Notice of Motion and Motion for Order of Reference* 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 Complaint and Plaintiff's Motion for Order of Reference was held on April 26, 2023.



6. On April 24, 2023, counsel for Defendant Gardner 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 Gardner'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 the 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 the undersigned as Special Referee.

11. On May 8, 2023, counsel for Defendant Gardner 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 Richard O. Gardner, III* 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 Gardner 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 (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 Gardner's Motion to Alter or Amend Judgment Pursuant to Rule 59(A), SCRCP*. In accordance with the *Order of Reference*, I presided over the Motion to Enlarge Time and the underlying foreclosure hearing. As Rule 59(e), SCRCP did not toll the answer deadline as set forth in Rule 12(a), SCRCP, I denied the motion. As Defendant Gardner failed to file an answer within fifteen (15) days from the denial of the motion to dismiss, the Court ruled that Defendant Gardner was in default.



16. As set forth in the pleadings, and as Mrs. Barton testified, Founders obtained a judgment against the Defendant pursuant to that certain *Default Judgment* 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, Judgment No. 2013CP2901041, in the original principal amount of \$7,580.00 (the "Judgment"). Interest on the Judgment has accrued at the legal statutory rate, compounded annually, from July 15, 2013, and interest continues to accrue at the legal rate.

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

18. At the time the Judgment was recorded in Lancaster County, the Defendant was the owner, and currently is the owner, of certain real property, with improvements thereon, located in Lancaster County, South Carolina (the "Subject Property") described hereinbelow, pursuant to that certain Title to Real Estate deed recorded in the Lancaster County Register of Deed's Office on August 4, 2009, in Book 526 at Page 198 (the "Deed"):

Legal Description:¹

All that certain piece, parcel or lot of land with improvements thereon, containing 0.7013 acres, lying, being and situate in the Town of Kershaw, Lancaster County, South Carolina, and more particularly being bounded and described as follows: On the NORTH by East Church Street; On the WEST by North Ashe Street; On the SOUTH by property of Gabriel B. Ingraham, and Andrea Ingraham; and, On the EAST by Lot B, formerly property of Sherman. The above described property is more particularly shown and described on a Plat prepared for Richard O. Gardner, III, by Jeffrey N. Hilliard, P.L.S., dated July 25, 2009, and recorded as Plat Number 2009-349 in the Office of the Register of Deeds for Lancaster County, South Carolina. Reference to said Plat is made for a more accurate description.

DERIVATION: This being a portion of the property conveyed to Richard O. Gardner, III by the Deed of National Residential Nominee Services, Inc., recorded August 4, 2009, in Deed Book 526 at Page 198 in the Office of the Register of Deeds for Lancaster County, South Carolina.

TMS No: 156J-0A-003.00

ADDRESS: 302 East Church Street, Kershaw, SC 29067

¹ The Legal Description for the Subject Property is updated herein to only reflect the property currently owned by the Defendant. Subsequent to receiving title to the real property described in the Deed, the Defendant divided the real property into two separate parcels, as reflected by Plat Book 2009, at Page 349, and once divided, the Defendant conveyed a portion of the property to a third party, retaining title to the portion described hereinbelow.



19. Founders' Judgment attached to the Subject Property at the time of its recordation in Lancaster County on July 31, 2013, and Founders' Judgment remains attached to the Subject Property as a lien against the property.

20. It appears to the Court that Wells Fargo Bank, N.A. ("Wells Fargo") holds a first mortgage lien on the Subject Property, pursuant to that certain Mortgage recorded in Lancaster County on August 4, 2009, in Book 2141 at Page 19, in favor of 1st Choice Mortgage/Equity Corp. of Lexington. Thereafter, the Mortgage was assigned to Wells Fargo by that certain Corporate Assignment of Mortgage recorded September 20, 2017, in Book 3427 at Page 268, Lancaster County Register of Deed's Office. Wells Fargo is currently the owner and the holder of the Mortgage (hereinafter, the "Wells Fargo Mortgage").

21. 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. The sale of the Subject Property will be made subject to the first mortgage lien of Wells Fargo, and the proceeds from the sale 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.

22. I further conclude that Founders is entitled to recover its attorneys' fees and costs incurred in the prosecution of this action to enforce its Judgment Lien.

23. I further conclude that Founders holds a superior judgment lien against the Subject Property, subject only to the first mortgage lien of Wells Fargo, 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 satisfy fully 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.

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

25. There is now due and owing to Plaintiff by Defendant Gardner, the following

Handwritten signature or initials, possibly "M 4 2", written in black ink.

amounts on the Judgment:

Amount of Judgment dated July 31, 2013	\$ 7,580.00
Accrued Interest at 9.9% per annum (from July 31, 2013, through May 30, 2023)	\$ 7,380.84
Attorneys' Fees and Costs (Allowed by the Court)	\$ 16,778.39
TOTAL DEBT AS OF MAY 30, 2023	\$31,739.23

26. Defendant Gardner 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 aforesaid, together with the costs and expenses of this action.

27. On default of payment at or before the time herein indicated, the Subject Property described in the Complaint, as hereinafter set forth, shall be sold by the Special Referee, or his agent, at public auction, at Lancaster, South Carolina, on some convenient sales day hereafter on the following terms, that is to say:

(a) FOR CASH: The Special Referee or his agent will require a deposit of 5% on the amount bid (in cash or equivalent) 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.

28. If Plaintiff is the successful bidder at said 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.

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

30. 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.

31. 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.

32. The Special Referee will 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 Gardner's homestead exemption;

Fourth: To the payment of the Judgment Indebtedness to the Plaintiff; 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 Gardner, and if a Writ of Assistance is presented, the Sheriff of Lancaster County is ordered and directed to eject and remove from the premises any occupant(s) of the property, together with all personal property located thereon, and put the successful bidder or his assigns in such peaceable possession.

33. And it is further ORDERED that the Defendant and all persons whosoever 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.

34. 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.


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35. 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.

36. The Subject Property ordered to be sold are described as follows:

Legal Description:

All that certain piece, parcel or lot of land with improvements thereon, containing 0.7013 acres, lying, being and situate in the Town of Kershaw, Lancaster County, South Carolina, and more particularly being bounded and described as follows: On the NORTH by East Church Street; On the WEST by North Ashe Street; On the SOUTH by property of Gabriel B. Ingraham, and Andrea Ingraham; and, On the EAST by Lot B, formerly property of Sherman. The above described property is more particularly shown and described on a Plat prepared for Richard O. Gardner, III, by Jeffrey N. Hilliard, P.L.S., dated July 25, 2009, and recorded as Plat Number 2009-349 in the Office of the Register of Deeds for Lancaster County, South Carolina. Reference to said Plat is made for a more accurate description.

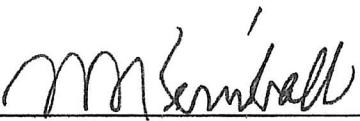
DERIVATION: This being a portion of the property conveyed to Richard O. Gardner, III by the Deed of National Residential Nominee Services, Inc., recorded August 4, 2009, in Deed Book 526 at Page 198 in the Office of the Register of Deeds for Lancaster County, South Carolina.

TMS No: 156J-0A-003.00

ADDRESS: 302 East Church Street, Kershaw, SC 29067

37. 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 3, 2023



FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2022-CP-29-01298

Founders Federal Credit Union

Richard O. Gardner, III

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>
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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), SCRCPC; Rule 41(a), SCRCPC (Vol. Nonsuit); Rule 43(k), SCRCPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRCPC; 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		

Handwritten signature/initials

the order:

Legal Description:

All that certain piece, parcel or lot of land with improvements thereon, containing 0.7013 acres, lying, being and situate in the Town of Kershaw, Lancaster County, South Carolina, and more particularly being bounded and described as follows: On the NORTH by East Church Street; On the WEST by North Ashe Street; On the SOUTH by property of Gabriel B. Ingraham, and Andrea Ingraham; and, On the EAST by Lot B, formerly property of Sherman. The above described property is more particularly shown and described on a Plat prepared for Richard O. Gardner, III, by Jeffrey N. Hilliard, P.L.S., dated July 25, 2009, and recorded as Plat Number 2009-349 in the Office of the Register of Deeds for Lancaster County, South Carolina. Reference to said Plat is made for a more accurate description.

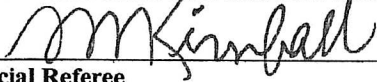

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The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest 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.

		3/25/19
Special Referee	Judge Code	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:

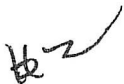
Suzanne Taylor Graham Grigg
MAYNARD NEXSEN PC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29202
Telephone: 803-771-8900
Fax: 803-253-8277

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 Richard O. Gardner III

Case Number: 2022CP2901298

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

Jeff Hammond

Jeff Hammond