

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS

Wintrust Mortgage, a Division of Barrington
Bank and Trust Co., N.A,
PLAINTIFF,

vs.

John B. Heyward; Wanda Heyward;
DEFENDANT(S)

ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT
AND JUDGMENT OF FORECLOSURE AND
SALE

(NON-JURY MORTGAGE FORECLOSURE)

C/A NO: 2020-CP-43-00287

DEFICIENCY WAIVED

RECEIVED

DEC 06 2023

SC Court of Appeals

TO:
Hutchens Law Firm LLP
Attorney for Plaintiff

On February 14, 2020, Plaintiff filed this action for foreclosure on real property owned by John B. Heyward and Wanda Heyward ("Defendants") located at 511 Winn Street Sumter, SC 29150 bearing TMS No. 228-02-02-023, ("Property.") The Defendants were properly served with the Summons, Complaint, and Notice of Foreclosure Intervention. Defendants filed an Answer on March 12, 2020 and Answer and Counterclaims on August 2, 2021. The Defendants in their Answer stated that they did not wish to participate in foreclosure intervention

This matter was referred to the Honorable Michael M. Jordan, Master in Equity for Sumter County by Order of the Court filed March 11, 2022 with jurisdiction and authority to enter final judgment on any and all causes of action contained in this matter. The Plaintiff moved for summary judgment by written motion electronically filed March 23, 2022, and supported by Affidavit.

This matter came before me for hearing on the Plaintiff's Motion for Summary Judgment on May 18, 2022 and was attended by the Defendants, John B. Heyward and Wanda Heyward, and John Kay, counsel for Plaintiff. From the evidence presented at the motion hearing on May 18, 2022, I find as rule as follows:

At the hearing, Plaintiff submitted one exhibit consisting of its motion, affidavit of debt and memorandum. The Defendants submitted eight exhibits as follows: objection to summary judgment motion with notarization, declaration, memorandum and authorities; request to admit; notice of non-response; additional notarization; request for foreclosure intervention (seeking rescission); answer filed traditionally March 12, 2022 seeking rescission, answer filed

traditionally August 2, 2021 including counterclaim for \$371,600; January 9, 2020 letter requesting discovery; right to cancel notice asserting cancellation and acknowledging purchase money transaction are not subject to right of rescission; time line of events; notice of cancel recorded February 28, 2020 at volume 1265 at page 4252; cancel notice³ traditionally filed August 2, 2021 ; repetitive documents of the forgoing; revocation for deed of trust; certified mail receipt; notice of default, rescission and revocation; repetitive documents of the forgoing; notice of rebuttal and estoppel; certified mail receipts; property tax exemption from SCDOR; property tax exemption denial from SCDOR; legal points; notary mistakes information form; birth certificate amendment order; loan application (incomplete); 1099 OID IRS form, cancellation of debt, abandonment secured property; tax escrow agreement; title agents insurance; name affidavit; securitization; affidavit of undead, sovereign.

After reviewing the above, it is clear that the Defendants do not dispute that the payments required on the note and mortgage have not been made. Instead, the Defendants wish to cancel the loan but retain ownership of the real property. There could be nothing further from equitable relief as contemplated by this Court. The Defendants cannot avail themselves of the benefits and opportunities a mortgage loan provides, and the challenge and condemn every aspect of same from its inception through foreclosure. A mortgage loan offers a consumer the opportunity to purchase a home on credit terms, making payments over time which in total far exceed the amount the typical purchaser could garner in a single lump sum fashion at the outset. It is unfortunate that the Defendants see this process in a completely negative light and believe rather than benefitted, that they have been swindled.

From the documents and arguments presented, I find no evidence of fraud on the part of the Plaintiff as claimed by the Defendants. I find no evidence that the mortgage loan was improperly originated, closed in escrow, recorded, or serviced. I find that Defendants' efforts to cancel the transaction were misplaced, as the loan represented purchase money and not a refinance. Moreover, I find their claim that the mortgage should be cancelled and the property remain theirs to be without merit or support in the law.

Viewing the evidence presented in the light most favorable to the nonmoving party as required, I find that the Plaintiff has established that it is entitled to the relief requested and is granted summary judgment for foreclosure of the mortgage in question. The loan is in default

and there is no genuine issue of material fact presented and further inquiry into the matter is not needed to clarify application of the law.

PROCEDURAL HISTORY

1. The Lis Pendens was filed on February 14, 2020.
2. The Summons and Complaint were filed on February 14, 2020.
3. The Certification of Compliance with the Coronavirus Aid, Relief, and Economic Security Act was filed on February 15, 2022
4. Service was made upon the Defendant(s) named in this Order as is shown by the Proof(s) of Service filed herein.
5. The Defendant(s) and/or all attorneys of record were notified of the time, date, and place of the hearing in this matter.
6. According to the Affidavit filed herein, no Defendant is in the Military Service of the United States of America, as contemplated under the Service members Civil Relief Act, and any amendments thereto.
8. The loan is no longer subject to the Supreme Court of South Carolina's Administrative Order 2011-05-02-01 because the Mortgagor(s) have been served with the required notice of rights, and more than 30 days have elapsed since service upon the Mortgagor(s), and, the Mortgagor(s) have failed, refused, or voluntarily elected not to participate in any foreclosure intervention process. The Mortgagors indicated in their responsive pleadings that they did not wish to participate in foreclosure intervention.

FINDINGS OF FACT

1. For value received, John B. Heyward made, executed and delivered a Note dated August 27, 2018, promising thereby to pay to the order of Wintrust Mortgage, a Division of Barrington Bank and Trust Co., N.A. the sum of One Hundred Twenty-Nine Thousand Nine Hundred Dollars and No Cents (\$129,900.00) with interest at 5.000 percent per annum. Other terms and conditions are stated in the Note, which is of record herein.
2. To better secure the payment of the Note described above, the said John B. Heyward and Wanda Heyward made, executed and delivered to Mortgage Electronic Registration Systems, Inc., as nominee for Wintrust Mortgage, a Division of Barrington Bank and Trust Co., N.A., its successors and assigns a mortgage in writing, dated August 27, 2018, covering real

property in Sumter County, which is the same as that described in the Complaint. The mortgage was filed on August 29, 2018, and is of record in the Office of the Register of Deeds for Sumter County in Mortgage Book 1247 at page 5131.

3. Thereafter, by virtue of an assignment dated October 30, 2019, recorded November 25, 2019, in Mortgage Book 1262 at page 3105, Mortgage Electronic Registration Systems, Inc., as mortgagee, as nominee for Wintrust Mortgage, a Division of Barrington Bank and Trust Co., N.A., its successors and assigns, assigned said mortgage unto Wintrust Mortgage, a Division of Barrington Bank and Trust Co., N.A. making Wintrust Mortgage, a Division of Barrington Bank and Trust Co., N.A. the present lien holder and Plaintiff herein.

4. The above referenced instrument constitutes a first mortgage lien and is a purchase money mortgage with the proceeds of the loan being used to purchase the property above described.

5. Payment due on the Note has not been made as provided for therein, and the Plaintiff, as the holder thereof, has elected to require immediate payment of the entire amount due thereon and has placed the Note and Mortgage in the hands of the attorney herein for collection.

6. I find that since the inception of this action, plaintiff's attorney has assumed responsibility for the institution of this action and has searched and updated the title on the subject property from the date the current owner received the property or the date the mortgage was executed to the date of the filing of the Lis Pendens.

The Firm has been responsible for the preparation of the following pleadings.

1. Notice of Foreclosure Intervention
2. Lis Pendens
3. Summons and Complaint
4. Affidavit of Default
5. Order of Reference
6. Notice of Hearing
7. Proposed Order and Judgment of Foreclosure and Sale
8. Notice of Sale
9. Record of Hearing

10. Other documents as applicable pertaining to service, foreclosure intervention and prosecution of the action.

Additionally, the Firm has arranged for service of process on the Defendant(s), and has scheduled and attended the hearing in the matter, has provided reinstatement/payoff figures to the primary Defendant(s), if requested, and has had telephone conversations with the Defendant(s), if requested. Future duties include forwarding copies of the Order and Judgment of Foreclosure and Sale to the Defendant(s), advising the Defendant(s) of the date that the property will be sold, arranging and coordinating the amount to be bid by Plaintiff, representation of Plaintiff at sale and preparation of after sale documentation as required. In light of the potential liabilities inherent in a foreclosure matter, the attendant responsibilities and the outcome obtained for the Plaintiff, I find that the contractual attorneys' fees in the amount of Two Thousand Forty Dollars and No Cents (\$2,040.00) are reasonable.

7. The amount due and owing on the Note, with interest at the rate provided in the Note, and other costs and expenses of collection, including attorneys' fees, secured by the Note and Mortgage, is as follows:

(a)	Total Principal due as of February 1, 2019	\$	129,271.79
(b)	Interest from January 1, 2019 through March 7, 2022 @ current interest rate of 5.000%	\$	20,575.76
(c)	Escrow Adjustments (debits or credits)	\$	4,133.81
	County Taxes	\$	1,100.20
	Escrow Credit	(\$	4,530.00)
	Prior Servicer Escrow Balance	\$	1,469.39
(d)	Late Charges	\$	306.79
(e)	Property Inspections	\$	198.00
(f)	Foreclosure Costs	\$	1,289.78
(g)	Attorney Fees	\$	2,040.00
	TOTAL DEBT	\$	157,815.93

Interest for the period from the date shown above, through the date of this Judgment at the above stated rate to be added to the above stated "Total Debt" to comprise the amount of the judgment debt entered herein and interest after the date of judgment at the current rate of 5.000% per annum (pursuant to the terms of the Note and Mortgage) on the judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the mortgage through the date to which such interest is computed.

8. That the Plaintiff specifically waives its rights to a deficiency judgment in the event the sale of the real estate herein does not yield a sum sufficient to satisfy all indebtedness due to the Plaintiff, including costs and attorney fees.

9. Since a personal or deficiency judgment is being waived, the bidding will not remain open but compliance with the bid may be made immediately.

10 The loan is not applicable for the Home Affordable Modification Program as that program sunset on December 31, 2016.

CONCLUSION OF LAW

I, therefore, conclude as follows:

1. The Plaintiff should have judgment of foreclosure of the mortgage and the mortgaged property should be ordered sold at public auction after due advertisement. The Plaintiff is also granted summary judgment on its foreclosure claim as stated previously in this Order and as to the Defendant's counterclaims.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. There is due to the Plaintiff on the obligation and mortgage set forth in the Complaint the sum of One Hundred Fifty-Seven Thousand Eight Hundred Fifteen and 93/100 Dollars (\$157,815.93) representing the "Total Debt" due Plaintiff as set forth supra, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof.

2. The amount due in the preceding paragraph (the "Total Debt" as set forth supra and later accrued interest on the principal) shall constitute the total judgment debt due the Plaintiff and shall bear interest hereafter at the current rate of 5.000% percent per annum.

3. That the Defendants liable for the aforesaid mortgage debt shall, on or before the date of sale of the property hereinafter described, pay to the Plaintiff, or Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

4. That on default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, as hereinafter set forth, be sold by the Presiding Judge at public auction at the Judicial Center at 215 N. Harvin Street, Courtroom 1-A, Sumter County, South Carolina in Sumter County, South Carolina, on some convenient sales day hereafter, on the following terms, that is to say:

A. FOR CASH: The Presiding Judge will require a deposit of Five percent (5%) on the amount of the bid (in cash or equivalent) at the time of the sale, 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 Plaintiff's debt.

B. Interest on the balance of the bid shall be paid to the day of compliance at the current rate of 5.000% percent.

C. The sale shall be subject to taxes and assessments, existing easements and easements and restrictions of record.

D. The above referenced instrument constitutes a first mortgage lien and is a purchase money mortgage with the proceeds of the loan being used to purchase the property.

E. The Purchaser is to pay for the deed preparation, for Deed Stamps and costs of recording the Deed.

F. If the successful bidder is a third party other than the Plaintiff, interest on the balance of the bid shall be paid to the date of compliance at the rate listed in the figures above.

5. If Plaintiff be the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of the Plaintiff in full, Plaintiff may pay to the undersigned Presiding Judge only the amount of the costs and expenses crediting the balance of the bid on Plaintiff's indebtedness.

6. Personal or deficiency judgment having been waived, the bidding will not remain open after the date of sale and compliance with the bid may be made immediately.

7. That the Presiding Judge 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 premises sold. The Plaintiff, or any other party to this action, may become a purchaser at such sale, and that 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 Presiding Judge may advertise the said premises for sale on the next, or some other subsequent sales day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured.

8. That the Presiding Judge will apply the proceeds of the sale as follows:

FIRST: To payment of the amount of the costs and expenses of this action, including any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court.

NEXT: To the payment to the Plaintiff or Plaintiff's attorney, of the amount of Plaintiff's debt and interest, so much thereof as the purchase money will pay on the same.

NEXT: Any surplus will be held pending further order of the court.

9. It is further ORDERED, ADJUDGED AND DECREED that in the event the successful bidder to whom the deed of conveyance has been issued subsequent to the sale is other than the Defendants in possession herein, the Sheriff of Sumter County is ordered and directed to eject and remove from the premises the occupants of the property sold, together with all personal property located thereon, and put the successful bidder to whom the deed of conveyance has been issued or his assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.

10. And it is further ORDERED, ADJUDGED AND DECREED that each Defendant and all persons whomsoever claiming under him, her or them, be forever barred and foreclosed of all right, title, interest and equity of redemption in the said mortgaged premises so sold, or any part thereof.

11. And it is further ORDERED, ADJUDGED AND DECREED that any prior lien that has been paid in full is hereby satisfied and canceled of record.

12. IT IS FURTHER ORDERED that the Deed of conveyance made pursuant to said sale shall contain the names of only the first named Plaintiff and the first named Defendant and the Defendant who was the titleholder of the mortgaged property at the time of filing of the

Notice of Pendency of the within action, and the name of the Grantee, and the Presiding Judge is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said Deed.

13. The Presiding Judge will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance.

14. Upon issuance of a Presiding Judge's Report on Sale and Disbursements, the Register of Deeds is directed to release of record the mortgage lien being foreclosed, which mortgage lien is described as follows:

That Mortgage originally given to Mortgage Electronic Registration Systems, Inc., as nominee for Wintrust Mortgage, a Division of Barrington Bank and Trust Co., N.A., its successors and assigns by John B. Heyward and Wanda Heyward, dated August 27, 2018 and recorded August 29, 2018, in Mortgage Book 1247 at page 5131.

15. The following is a description of the premises herein ordered to be sold:

ALL THAT CERTAIN piece, parcel or lot of land with the improvements thereon, if any, situate, lying and being in the City and County of Sumter, State of South Carolina, being shown and delineated as Lot No. 4 on that certain plat of M.K. Millard dated March 16, 1951, and recorded in the Office of the Register of Deeds for Sumter County in Plat Book Z-10, Page 1. This said lot has such metes, boundaries, courses and distances as are shown on said plat, which are incorporated herein in accordance with the provisions of Section 30-5-250 of the Code of Laws of South Carolina, 1976. This being the same property known as 511 Winn Street, Sumter, SC. Represented by Sumter County Tax Parcel No. 228-02-02-023.

THIS BEING the same property conveyed unto John B. Heyward and Wanda Heyward, as joint tenants with right of survivorship, by virtue of a Deed from Carl E. Cummings and Lisa C. Shivers a/k/a Lisa C. Galloway and Katherine C. Higginbotham and Mary C. Hodge dated August 27, 2018 and recorded August 29, 2018 in Book 1247 at Page 5125 in the Office of the Register of Deeds for Sumter County, South Carolina.

511 Winn Street
Sumter, SC 29150
TMS# 228-02-02-023

16. IT IS FURTHER ORDERED that if the Plaintiff or the 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 sale will be rescheduled for the next available sales day.

Michael M. Jordan
Master in Equity for Sumter County

Sumter, South Carolina
_____, 2022



Sumter Common Pleas

Case Caption: Wintrust Mortgage , plaintiff, et al VS John B Heyward , defendant, et al
Case Number: 2020CP4300287
Type: Master/Order/Writ of Assistance

And It Is So Ordered

S/ Michael M. Jordan - 3085

Electronically signed on 2023-08-28 11:47:35 page 5 of 5

ELECTRONICALLY FILED - 2023 Aug 28 11:52 AM - SUMTER - COMMON PLEAS - CASE#2020CP4300287