

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:

Samuel H. Altman, Esq.
Post Office Box 600
Charleston, SC 29402
ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BERKELEY)
)
 James C. Caldwell and Judy L. Caldwell,)
)
 Plaintiff,)
)
 vs.)
)
 Angela Lynn Ramsey a/k/a Angela L. Ramsey;)
 Thomas M. Ramsey; Beneficial Mortgage Co.)
 of South Carolina; Carolina Nurseries, Inc.;)
 Collins Burbage; Pilot Investment Group, LLC;)
)
 Defendants.)
)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2010-CP-08-1648

**DECREE OF FORECLOSURE AND
 ORDER OF SALE**

FILED
 2013 MAR 12 PM 9:10
 CLERK OF COURT
 BERKELEY COUNTY, SC

This matter came before the Court on a mortgage foreclosure case filed by the Plaintiffs against Angela Lynn Ramsey a/k/a Angela L. Ramsey, Thomas M. Ramsey, Beneficial Mortgage Co. of South Carolina, Carolina Nurseries, Inc., Collins Burbage, and Pilot Investment Group, LLC. The Plaintiffs seek to foreclose a note and mortgage in the original amount of \$140,000.00 dated May 5, 2004 executed by Angela Ramsey in favor of AgSouth Farm Credit, ACA of Summerville ("AgSouth") and assigned to them by an instrument dated January 20, 2006 and recorded in the Office of the Register of Deeds for Berkeley County in Volume 5337, at Page 168. The property that the Plaintiff seeks to foreclose contains approximately 38 acres, and at the time of the assignment contained a home located thereon in Berkeley County, South Carolina.

Carolina Nurseries, Inc. was joined as a Defendant as a result of a judgment filed of record against Angela Ramsey in the amount of \$1,594.33 as referenced in Case No. 2006-CP-08-376. Collins Burbage was joined as a party as a result of any interest that he may have had in the subject property as a result of a final decision issued by the South Carolina Court of Appeals in Case No. 2005-CP-08-2455. Burbage was the occupant of the home located on the subject property at the time the contract was entered and was also the tenant in the property at the time of the fire referenced herein. Beneficial Mortgage Co. of South Carolina

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was joined as a party as a result of a mortgage executed in its favor by the Ramseys dated November 11, 2004 and recorded in the Office of the Register of Deeds for Berkeley County on November 24, 2004 in Book 4370, at Page 23. Pilot Investment Group, LLC was joined as a party as a result of a contract that it executed with the Ramseys following the decision having been reached by the South Carolina Court of Appeals to purchase the subject property. All Defendants have either appeared or answered in this matter.

The Defendants Ramsey, through their attorney Brandt Shelbourne, responded to the service of the Summons and Complaint by the filing of an Answer, Affirmative Defenses, Counterclaims and Cross Claims. The Answer denies the material allegations of the Complaint and sets forth various defenses and counterclaims, including breach of contract, specific performance, and a claim for damages as a result of the alleged defaults of the Plaintiffs. Plaintiffs replied to the counterclaims denying same and asserting various defenses including impossibility of performance.

Collins Burbage did not respond to the Complaint and was placed in default. A motion was filed to set at time for a damage hearing, but it appears Burbage was not noticed of this hearing and any such action against Burbage will be held in abeyance until further order of this Court. None of the other Defendants appeared at the hearing.

The issues involved in this case were vigorously contested by the parties. As this case is one involving equity, the Court may find and has found the facts in accordance with its own view of the preponderance of the evidence. See Barnacle Broadcasting Inc. v. Baker Board, Inc., 343 SC 140 146, 538 SE 2d 675, Ct App (2000).

From the testimony taken at the hearing, the Court finds that in the year 2005, the Ramseys were experiencing financial difficulties as a result of their landscaping business not performing and faced the possibility of foreclosure of their AgSouth mortgage on the 38 acres which included the home located thereon. After a chance meeting between Mr. Ramsey and Mrs. Caldwell, the Plaintiffs and the Ramseys began discussions as to the possible purchase of the acreage in question and also what would be necessary

in order to protect the property while legal issues relating to the title could be resolved.

In September of 2005, a contract was entered into by the Ramseys and the Caldwell's, whereby the Caldwell's agreed to purchase the subject property from the Ramseys for \$469,000.00. Not specifically addressed in the contract was how the Caldwell's could help the Ramseys through the difficult time in which they found themselves, which would result in the sale of the property, as a court case would have to be filed and thoroughly litigated in order that they could pass title. The Caldwell's orally agreed to pay off the AgSouth loan and take an assignment of same, to fund the necessary payments to clear the title through John Dodds, a Mt. Pleasant attorney, to make payments as necessary to Beneficial Finance, and to provide for certain personal expenses incurred by the Ramseys, including payment of taxes on the property. In order to be able to fund this undertaking, Mr. Caldwell, the Chief of Police in Moncks Corner and Mrs. Caldwell, a real estate agent, re-mortgaged their home and made the payment of \$156,432.02 to AgSouth for the assignment of the note and mortgage which they now seek to foreclose.

At the time the loan was made, the Caldwell's could not inspect the home on the property as it was occupied by the party who the Ramseys ending up suing to clarify the title issues. Although the Caldwell's were not able to perform normal due diligence as far as the condition of the premises, they were fully aware that the home was continuously occupied from the date of the contract until late 2007 when Mr. Caldwell and others were advised that a fire had occurred at the home. While the damage was substantial, and estimates were received by the Ramseys to rebuild the home, no repair was ever undertaken. There is testimony of record that Mr. Caldwell believed, based on statement received from Mr. Ramsey, that the home would be repaired.

The evidence reflects that the Ramseys had an insurance policy on the home issued by Allstate Insurance Company in place at the time of the fire which set the value of the improvements (the home) at \$121,000.00. The Ramseys received two bids for the repair of the home, one in the amount of \$125,000.00 and another in the amount of \$135,000.00. The Court is aware that after the purchase of the note and

mortgage from AgSouth, the insurance policy was not endorsed to include the Caldwells as a payee under the mortgage clause of that policy. The Ramseys did indicate, through their testimony, that Allstate offered \$44,000.00 to repair the home, but they would have to provide proof that the house was being repaired. The Ramseys further stated that they were unable to do the repairs, and so none were done. The Ramseys did not obtain the assistance of an attorney to negotiate with AllState and ended up accepting \$14,000.00 which they personally utilized.

The note executed by the Ramseys and purchased by the Caldwells provided for a payment schedule with a maturity date of June 1, 2009. The parties anticipated that the contract would be closed after a decision had been reached by the South Carolina Court of Appeals.

The litigation in which the Ramseys were involved was finally ended by a decision of the South Carolina Court of Appeals on March 30, 2009 in their favor. In accordance with the contract, a closing was to take place within ninety (90) days thereafter. The record reflects that the closing did not take place.

The Ramseys and the Caldwells, through their attorneys, recognized that since a closing had not taken place, it was agreed that the advances made by the Caldwells to the Ramseys should be protected by an execution of a Future Advance Agreement. The Future Advance Agreement was executed by the parties and acknowledged the advances made on behalf of the Ramseys.

The Ramseys attempted to sell the property to possibly forego this litigation, but were unsuccessful in obtaining a buyer.

I FIND there are issues relating to the contract executed between the parties. In Paragraph 4 of the contract, it clearly states that "the seller agrees to deliver the property free of debris and in a clean condition. The property including, but not limited to, landscaping and lawn, shall be maintained in the same condition from the effective date of this Agreement until possession is delivered, ordinary wear and tear excepted." The Plaintiff also argues that Paragraph 10 reserves the right to obtain a home protection plan which was an insurance policy that was to be issued at closing. The contract also notes that the property was to be

delivered in an "as is" condition. The Ramseys claim "as is" relates to the time each extension was entered into, the last being in March of 2009. The Ramseys also argue, pursuant to the contract, to support their defenses to the foreclosure and in support of their counterclaims that the Caldwell's failed to comply with Paragraph 8 of the contract, which requires them to apply and obtain a loan to purchase the property, time being of the essence.

I FIND that the record reflects that no formal application was filed, but efforts were made by the Caldwell's to obtain financing, which they were unable to do, because of 1) the condition of the property as a result of the fire that had taken place to which repairs were never made, 2) the economic conditions in the country as a result of the recession that was affecting all parts of the economy, including real estate, and 3) the decline in the income of the Caldwell's.

I FIND that the condition of the property in Section 4 of the contract controls the obligations of the Caldwell's to close as the Ramseys were required to deliver the home to them in the condition that it was in at the time the contract was executed. Again, I note that at the time the contract was executed, there was an occupant of the home; it was free from any holes in the roof; and was insured by AllState Insurance Company.

I ALSO FIND that it was the intention of the Caldwell's to have a home protection plan in place which would provide some benefit to them as it relates to the home, but would not have been able to obtain a policy because of the condition of the property as a result of the fire.

I FURTHER FIND that even if the Plaintiffs would have obtained a financing commitment, they would not have been under any obligation to close the transaction, as the Ramseys were not in a position, and have not been in a position, to deliver the property in the same condition it was in at the time the contract was originally executed in 2005.

I FIND that the Caldwell's have established the defense of impossibility of performance as it relates to the specific performance claim of the Ramseys. South Carolina law provides that "a party to a contract

STATE OF SOUTH CAROLINA)
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 COUNTY OF BERKELEY)
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 Angela Lynn Ramsey a/k/a Angela L.)
 Ramsey; Thomas M. Ramsey; Beneficial)
 Mortgage Co. of South Carolina; Carolina)
 Nurseries, Inc.; Collins Burbage;)
 Pilot Investment Group, LLC;)
)
 Defendants.)
)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2010-CP-08-1648

SUPPLEMENTAL ORDER

2013 JUL -9 PM 4:44
 HENRY P. BROWN
 CLERK OF COURT
 BERKELEY COUNTY, SC
[Signature]

FILED

This matter came before me on May 23, 2013 on the motion of Brandt Shelbourne, Esquire, attorney for the Defendants Ramsey seeking reconsideration of the decision issued in favor of the Plaintiffs filed by this Court on March 12, 2013 and also the need to address a claim of the Defendants Ramsey on their counterclaims against Pilot Investment Group, LLC.

After listening to the arguments of counsel and reviewing the record in this case, I do not find any basis to modify my order as it relates to the entitlement of the Plaintiffs to have a Decree of Foreclosure and Sale issued in its favor. The motion for reconsideration is denied.

As for Defendant Ramsey's crossclaims against Co-Defendant Pilot Investments, this Court finds that Defendant Ramsey is entitled to damages for Pilot's breach of its contractual obligations. Pilot Investments agreed to purchase the property for \$600,000.00 and failed to do so. This Court hereby awards damages to Defendant Ramsey in the amount of Six Hundred Thousand and 00/100 Dollars (\$600,000.00) against Pilot Investments.

ALL OF MY FINDINGS are hereby adopted as the ORDER of this Court this 8 day of

July
June, 2013.

Moncks Corner, South Carolina

Robert E. Watson
Robert Watson
Master-in-Equity for Berkeley County

STATE OF SOUTH CAROLINA
 COUNTY OF BERKELEY
 IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2010-CP-08-01648

James C. Caldwell and Judy L. Caldwell

Angela Lynn Ramsey

PLAINTIFF(S)

DEFENDANT(S)

| | |
|--|--|
| | Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented-Litigant |
|--|--|

2010 JUL 13 PM 4:44
 FILED
 CLERK OF COURT
 BERKELEY COUNTY, SC

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 : _____

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) |
|--|--|--|
| | | \$ |
| | | \$ |
| | | \$ |

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

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.

Rams W. W. W.
 Presiding Judge / Master in Equity

3058
 Judge Code

7/19/13
 Date

VB

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:

Darfner Altman & Wilborn
P. O. Box 600
Charleston, SC 29402
ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)
Mary J. Blumberg
CLERK OF COURT

Court Reporter: