

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Wells Fargo Bank, N. A.,

Plaintiff,

v.

Michelle Hodges, Individually; Michelle Hodges, ]  
as Personal Representative of the Estate of Ruth ]  
Ladson Witherspoon, Stanley Witherspoon; SC ]  
Housing Corp.; Twin Creeks Homeowners ]  
Association, Inc., ]

Defendants.

] IN THE COURT OF COMMON PLEAS

] CIVIL CASE NO 2017CP2308016

**EXHIBIT "F"**

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STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 Wells Fargo Bank, N.A., )  
 )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 Michelle Hodges, Individually; Michelle )  
 Hodges, as Personal Representative of the Estate )  
 of Ruth Ladson Witherspoon; Stanley )  
 Witherspoon; SC Housing Corp.; Twin Creeks )  
 Homeowners Association, Inc., )  
 )  
 Defendants. )

IN THE COURT OF COMMON PLEAS  
 Case No. 2017-CP-23-08016

**ORDER OF JUDGMENT  
 OF FORECLOSURE AND SALE  
 No Deficiency Demanded**

**RECEIVED**  
 DEC 30 2024  
 SC Court of Appeals

Pursuant to Rules 53 and 71 of the South Carolina Rules of Civil Procedure, the above-entitled action was referred to the undersigned by virtue of that certain order entered on August 7, 2019 on file herein for the purpose of conducting a hearing on the same, taking testimony, determining all issues of fact and law, and entering a final judgment thereon.

**Background**

This mortgage foreclosure was filed on December 22, 2017. Defendant Michelle Hodges<sup>1</sup> (“Ms. Hodges”) filed a timely Answer and vigorously contested the foreclosure action and asserted numerous counterclaims against Wells Fargo. On August 7, 2019, Judge Gravely entered an order granting Wells Fargo’s Motion for Summary Judgment and Motion to Strike Ms. Hodges’ Jury Trial Demand (the “Order”). The Order granted summary judgment in favor of Wells Fargo and dismissed Ms. Hodges’ counterclaims and numerous affirmative defenses. Thereafter, Ms. Hodges appealed the Order to the South Carolina Court of Appeals. The South Carolina Court of Appeals

<sup>1</sup> Ms. Hodges did not sign the note and mortgage herein and no relief is being sought against her or the Estate of Ruth Ladson Witherspoon.

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affirmed the Order by unpublished decision entered on August 17, 2022. Ms. Hodges then petitioned for certiorari to the South Carolina Supreme Court, which was denied on March 5, 2024. The Remittitur was issued on March 15, 2024. After the Remittitur, Wells Fargo filed a motion for a status conference, which Ms. Hodges did not attend. Instead of attending the status conference, Ms. Hodges filed a motion to amend her pleadings, which this Court denied. Thereafter, this matter was scheduled for a final hearing on the merits for November 21, 2024 (the "Hearing").<sup>2</sup>

### The Hearing

Jason D. Wyman, Esq. appeared at the Hearing on behalf of Wells Fargo Bank, N.A. ("Wells Fargo"). Ms. Hodges appeared *pro se*. This Court received testimony from Philip Cargioli, a representative from Wells Fargo, and Ms. Hodges. At the Hearing, Ms. Hodges challenged Mr. Cargioli's ability to testify about the loan due to his alleged lack of personal knowledge. The Court overruled her objection based on the proper foundation laid by Wells Fargo's counsel concerning Mr. Cargioli's qualifications. *Deep Keel, LLC v. Atl. Priv. Equity Grp., LLC*, 413 S.C. 58, 773 S.E.2d 607 (Ct. App. 2015).

From the records and from the testimony and evidence introduced at the Hearing, the Court hereby makes the following findings of fact and conclusions of law.

### Findings of Fact

1. The Lis Pendens was filed on December 22, 2017.
2. The Summons and Complaint were filed on December 22, 2017.
3. All parties were properly served with the Complaint as evidenced by the filed affidavits of service.

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<sup>2</sup> On the day of the hearing, November 21, 2024, Ms. Hodges filed another round of motions. All are denied for reasons set forth herein and because the substance of her motions have previously been denied.

4. The following parties failed to respond to the Complaint after being properly served and are in default: Stanley Witherspoon and Twin Creeks Homeowners' Association.

5. According to the pleadings filed herein, no party in default is actively in the Military Service of the United States of America, as contemplated under the Servicemembers Civil Relief Act, U.S.C.A., Title 50, App. § 501, et seq., and any amendments thereto.

6. This Court has jurisdiction over all parties and the Subject Property.

7. All parties and/or attorneys of record were properly notified of the date, time, and place of the hearing in this matter as seen by the Notice of Hearing on file with the Court.

8. With the formal discontinuance of the Home Affordable Modification Program (HAMP) on December 31, 2016, South Carolina Administrative Order 2009-05-22-01 has expired by operation of law and is no longer applicable.

9. Based on the evidence presented at the Hearing, Plaintiff complied with Administrative Order 2011-05-02-1 issued by the South Carolina Supreme Court. Further, Ms. Hodges abandoned any claims related to compliance with the Administrative Order 2011-05-02-01 at the Hearing.

10. Ruth Witherspoon made, executed, and delivered to NVR Mortgage Finance, Inc. Lic. 1127 ("Lender") a certain Fixed Rate Note ("Note") dated March 28, 2012, in writing (hereinafter, "Note"), wherein and whereby Ruth Witherspoon promised to repay to Lender and its successors and assigns, the sum of \$158,414.00, together with interest at the initial rate of 3.750% per annum on the unpaid balance; said principal and interest being payable upon the occurrence of default as defined by the Note or maturity. Wells Fargo presented the Original Note at the Hearing, and this Court heard testimony concerning the endorsements on the Note.

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The Court finds the Note is endorsed in blank and Wells Fargo is in possession of the Original Note. A copy of the Note was admitted into evidence at the Hearing without objection.

11. In order to secure the payment of said Note, Ruth Witherspoon made, executed, and delivered to Mortgage Electronic Registration Systems, Inc. as mortgagee, as nominee for NVR Mortgage Finance, Inc. Lic. 1127, its successors and assigns, a certain mortgage dated March 28, 2012 (hereinafter, "Mortgage"). The Mortgage was signed, properly witnessed, and probated March 28, 2012. The Mortgage was recorded on March 29, 2012 in Book 5155 at Page 5354, in the Greenville County Register of Deeds. A copy of the Mortgage was admitted into evidence at the Hearing without objection.

12. The Mortgage encumbers property located in Greenville County, South Carolina, and described more fully therein as follows (the "Subject Property"):

ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND SITUATE, LYING AND BEING IN THE STATE OF SOUTH CAROLINA, COUNTY OF GREENVILLE, BEING SHOWN AND DESIGNATED AS LOT 83 OF TWIN CREEKS, PHASE II, SHEET 1 OF 2, ON PLAT THEREOF, PREPARED BY LANDMARK SURVEYING, INC. DATED FEBRUARY 12, 2007 AND RECORDED MARCH 22, 2007 IN THE REGISTER OF DEEDS OFFICE FOR GREENVILLE COUNTY, SC IN PLAT BOOK 1034, PAGE 19, AND MORE RECENTLY SHOWN ON PLAT PREPARED BY LANDMARK SURVEYING, INC., ENTITLED "CLOSING SURVEY FOR RUTH WITHERSPOON" DATED MARCH 14, 2012 AND RECORDED HEREWITH IN THE REGISTER OF DEEDS OFFICE FOR GREENVILLE COUNTY, SC IN PLAT BOOK 1135 AT PAGE 12. REFERENCE TO SAID LATTER PLAT IS HEREBY MADE FOR A MORE COMPLETE METES AND BOUNDS DESCRIPTION THEREOF.

THIS BEING THE SAME PROPERTY CONVEYED TO RUTH WITHERSPOON BY DEED FROM NVR, INC., DATED MARCH 28, 2012, RECORDED MARCH 29, 2012, BOOK 2403, PAGE 2222, IN THE REGISTER OF DEEDS OFFICE FOR GREENVILLE COUNTY, SOUTH CAROLINA.

TMS No.: 0550.24-01-169.00

Property Address: 6 Young Harris Dr.  
Simpsonville, SC 29681

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13. The Subject Property was originally conveyed to “Ruth Witherspoon, her successors and assigns.” At the Hearing, Ms. Hodges argued the Subject Property was held in a joint tenancy with the right of survivorship. This Court rejects this argument following a review of the Special Warranty Deed dated March 28, 2012 and recorded on March 29, 2012 in Book 2403 at Page 2222, in the Greenville County Register of Deeds. Despite her contention, no joint tenancy was created in the Deed.

14. Plaintiff is the holder of the Note and assignee of the Mortgage and has standing to proceed.

15. This Mortgage constitutes a purchase money first lien on the Subject Property.

16. At the Hearing, Ms. Hodges argued the Mortgage no longer constituted a valid lien on the Subject Property after Ms. Witherspoon passed away and relied on a case from Illinois to support her argument. This Court finds, while not fully understanding the argument of Ms. Hodges, this is not the law in South Carolina, and that the Mortgage survived Ms. Witherspoon’s death.

17. Thereafter, the Mortgage was assigned to Wells Fargo Bank, N.A. by assignment recorded January 20, 2017 in Book 5375 at Page 4081 in the Greenville County Register of Deeds. A copy of the Assignment of Mortgage was admitted into evidence at the Hearing without objection.

18. Subsequently, Ruth Witherspoon died intestate on July 5, 2015, leaving the Subject Property to her heirs or devisees, namely, Ms. Hodges and Stanley Witherspoon, as is more fully preserved in the Probate Records for Greenville County in Case No. 2015-ES-23-01615.

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19. The titleholders of record of the Subject Property as of the filing of the Lis Pendens in this action were Michelle Hodges and Stanley Witherspoon by virtue of that certain Deed of Distribution dated December 6, 2016, and recorded December 6, 2016 in Book 2501 at Page 5396 in the Greenville County Register of Deeds. Mr. Witherspoon has not appeared in this lawsuit.

20. The obligations under the terms and conditions of the Note are in default for, among other reasons, failing to make payments as and when due. Based on the testimony at the Hearing, the Note is due for the May 1, 2017 contractual installment.

21. Payment due on the Note has not been made as provided for therein, and the Plaintiff, as the holder thereof, has elected to accelerate payment of the entire indebtedness and has placed the Note and Mortgage in the hands of its attorney of record herein for collection.

22. Any notice required by the terms of the Note and Mortgage has been given to the applicable Defendants prior to the commencement of this action. A copy of the Demand Letter was admitted into evidence without objection.

23. Having considered the nature, extent and difficulty of the services rendered (the field of mortgage foreclosures being a specialized area of practice); the time involved in reviewing the various loan documents, performing the title search, preparing the pleadings and preparing for and attending hearings; the professional standing of the Plaintiff's attorney; the fee customarily charged in this jurisdiction for similar services; and the beneficial results obtained for the Plaintiff, I find that the sum of \$2,750.00 is a reasonable amount for Plaintiff's attorney fees and costs for services associated with filing this foreclosure action and are recoverable under the terms of the Note and Mortgage. Performance of additional services may result in a determination by this Court that additional reasonable attorney's fees are due.

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

Principal due:	\$142,695.08
Accrued interest through November 21, 2024 at 3.75% per annum (\$14.66 per diem):	\$40,871.92
Escrow Advances	\$ 27,287.80
Corporate Advances (Paid Attorney's Fees and Costs):	\$ 2,750.00
Late Charges:	\$ 51.20
<b>TOTAL DEBT</b>	<b>\$213,656.01</b>

A copy of the Payment History and Judgment Figures were entered into evidence without objection.

25. Total debt secured by Note and Mortgage, is \$213,656.01. Interest shall be added to the total debt at the rate stated above until the date a judicial sale is conducted herein. Additional interest accrual after the date of such judicial sale will be governed by terms set forth herein below.

26. The following parties named below claim or may claim a subordinate lien or junior interest upon or interest in the Subject Property. Such interest or liens are junior and subsequent to the lien of Plaintiff's Mortgage. Said liens or interests are of record and are described as follows:

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A. The Defendant, Michelle Hodges, Individually, and as Personal Representative of the Estate of Ruth Witherspoon claims to have some interest in the Subject Property. Any interest that this Defendant has in the Property would be "subject to" Plaintiff's Mortgage and this interest would be eliminated through a properly completed foreclosure sale.

B. The Defendant, Stanley Witherspoon has or may claim to have some interest in the Subject Property. Any interest that this Defendant has in the Subject Property would be "subject to" Plaintiff's Mortgage and this interest would be eliminated through a properly completed foreclosure sale.

C. The Defendant, SC Housing Corp. has or may claim to have some interest in the Property by virtue of a mortgage given by Ruth Witherspoon in the amount of \$36,000.00, dated September 24, 2014, and recorded November 6, 2014 in Book MO 5274 at Page 1624 in the Office of the Greenville County Register of Deeds. Any interest that this Defendant has in the Property is junior in priority to Plaintiff's Mortgage and this interest would be eliminated through a properly completed foreclosure sale.

D. The Defendant, Twin Creek Homeowner's Association, Inc.. has or may claim to have some interest in the Subject Property. Any interest that this Defendant has in the Property would be "subject to" Plaintiff's Mortgage and this interest would be eliminated through a properly completed foreclosure sale.

27. In the event there is a surplus from the sale of the subject property, the validity, priority and amount of such interests or claims will be determined at a hearing subsequent to the sale, in accordance with Rule 71(c), SCRCP.

**Conclusions of Law**

Based upon the pleadings and other documents filed and/or introduced as evidence in this

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matter, this Court makes the following conclusions of law:

1. All parties were properly served in this action.
2. Plaintiff's Mortgage constitutes a purchase money first lien upon the Subject Property.
3. Plaintiff is entitled to have an Order entered foreclosing the Note and Mortgage and selling the Subject Property located at 6 Young Harris Drive, Simpsonville, SC 29681, and more specifically described in Paragraph 12 of the Findings of Fact, *supra*, and the Subject Property should be sold at public auction after due advertisement according to the law and practice of the Court. *U.S. Bank Tr. Nat. Ass'n v. Bell*, 385 S.C. 364, 374-75, 684 S.E.2d 199, 205 (Ct. App. 2009) ("Generally, the party seeking foreclosure has the burden of establishing the existence of the debt and the mortgagor's default on that debt. Once the debt and default have been established, the mortgagor has the burden of establishing a defense to foreclosure such as lack of consideration, payment, or accord and satisfaction.")

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. Pursuant to Rule 53(e) of the South Carolina Rules of Civil Procedure, this Order of Judgment of Foreclosure and Sale shall constitute a final judgment.
2. Plaintiff is entitled to a judgment of foreclosure on the Subject Property under terms and provisions of the Note and Mortgage described above.
3. There is due on the Note and Mortgage the sum of \$213,656.01 as set out in the Findings of Fact, *supra*, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof. Interest shall continue to accrue on the outstanding principal balance due under the Note at the Note rate through the date of entry of

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judgment. The Total Debt plus accruing interest, the costs of advertising, additional court costs incurred by Plaintiff, and additional property protection, shall comprise the judgment debt entered pursuant to this Order of Judgment of Foreclosure and Sale. Interest after the date of entry of judgment shall continue on such judgment debt at the statutory rate.

4. That the Defendant(s) liable for the aforesaid Mortgage debt shall, prior to the date and time of the sale of the Subject Property, hereinafter described, pay to the Plaintiff, or the Plaintiff's attorney, the amount of the Plaintiff's debt to include continuing accruing interest as aforesaid, together with the costs and disbursements of this action.

5. That on default of payment prior to the date and time of the sale, the Property, hereinafter described, shall be sold by the undersigned Master In Equity at public auction, at the Greenville County Courthouse, on some convenient sales day hereafter, on the following terms, that is to say:

a. FOR CASH: The undersigned Master In Equity shall require a deposit of 5% on the amount of the 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 the same to be forfeited and first applied to the costs incurred by the Plaintiff related to the sale and the balance then applied to the Plaintiff's debt in a manner suitable to the Plaintiff.

b. Interest on the balance of the bid shall be paid to the day of compliance at the rate of 3.75% per annum.

c. The sale shall be subject to taxes and assessments, existing easements and restrictions of record, and any other senior encumbrances.

d. Purchaser to pay for the deed and the cost of recording the deed.

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6. That if the Plaintiff is 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, the Plaintiff may pay to the undersigned Master In Equity only the amount of the costs and expenses, crediting the balance of the bid on the Plaintiffs indebtedness.

7. That a personal or deficiency Judgment being waived, the bidding will not remain open for thirty (30) days and bidding will be final on the date of the sale, and compliance with the bid may be made immediately.

8. That the undersigned Master In Equity will, by advertisement according to law, give notice of the time and place of sale and the terms thereof; and that he will execute to the purchaser, or purchasers, a deed to the Subject Property sold. The Plaintiff, or any other party to this action, or any other person may become a purchaser at such sale. If such sale is made to anyone other than the Plaintiff or its assignee, should the successful bidder, or his/her assignee, fail to comply with the terms thereof within twenty (20) days after the date of sale, then the undersigned Master In Equity or the Plaintiff may re-advertise the Property for sale on the next, or some subsequent, sales day, according to the same terms set forth herein, and so on from time to time thereafter until a full compliance shall be secured.

9. That in the event an agent of the Plaintiff does not appear at the time of sale, the within property shall be withdrawn from sale and sold at the next available sales date upon the terms and conditions as set forth in the Judgment of Foreclosure and Sale or such terms as may be set forth in a supplemental order.

10. That the undersigned Master In Equity shall apply the proceeds of the sale as follows:

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FIRST: To the payment of the amount to the Plaintiff, or the Plaintiff's Attorney, of the amount of the Plaintiff's debt and interest (including attorney's fees) or so much thereof as the purchase money will pay on the same; and

NEXT: Any surplus will be held pending further Order of this Court pursuant to Rule 71(c), SCRPC.

11. That it is further ORDERED, ADJUDGED, AND DECREED that the Defendant(s) named herein, and all persons whomsoever claiming under him, them or it, 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.

12. That it is further ORDERED, ADJUDGED, AND DECREED that the deed of conveyance made pursuant to this judgment and said sale shall contain the names of only the Plaintiff, the first-named Defendant(s), who was the title holder of the mortgaged property at the time of the filing of the Lis Pendens, and the Grantee; and that the Greenville County Register of Deeds is hereby authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

13. It is further ORDERED, ADJUDGED AND DECREED if the named defendant(s) continues in possession of the property after a deed has been issued to the purchaser, then the Sheriff of Greenville County is directed to eject and remove named defendant(s) from 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.

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14. It is further ORDERED, ADJUDGED AND DECREED if the person(s) occupying the property after the deed has been issued to the purchaser is other than the named defendant(s), the purchaser shall serve the occupants with a Summons and Rule to Show Cause to determine why the occupant(s) should not be removed from the property.

15. That it is further ORDERED, ADJUDGED, AND DECREED that after the Order on Sale of Real Estate has been issued and filed, the undersigned Master In Equity shall direct the Register of Deeds to release of record the lien(s) being foreclosed, which lien(s) are described in the Findings of Fact herein above.

16. That it is further ORDERED, ADJUDGED, AND DECREED that the following is a description of the Property herein ordered to be sold:

ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND SITUATE, LYING AND BEING IN THE STATE OF SOUTH CAROLINA, COUNTY OF GREENVILLE, BEING SHOWN AND DESIGNATED AS LOT 83 OF TWIN CREEKS, PHASE II, SHEET 1 OF 2, ON PLAT THEREOF, PREPARED BY LANDMARK SURVEYING, INC. DATED FEBRUARY 12, 2007 AND RECORDED MARCH 22, 2007 IN THE REGISTER OF DEEDS OFFICE FOR GREENVILLE COUNTY, SC IN PLAT BOOK 1034, PAGE 19, AND MORE RECENTLY SHOWN ON PLAT PREPARED BY LANDMARK SURVEYING, INC., ENTITLED "CLOSING SURVEY FOR RUTH WITHERSPOON" DATED MARCH 14, 2012 AND RECORDED HEREWITH IN THE REGISTER OF DEEDS OFFICE FOR GREENVILLE COUNTY, SC IN PLAT BOOK 1135 AT PAGE 12. REFERENCE TO SAID LATTER PLAT IS HEREBY MADE FOR A MORE COMPLETE METES AND BOUNDS DESCRIPTION THEREOF.

THIS BEING THE SAME PROPERTY CONVEYED TO RUTH WITHERSPOON BY DEED FROM NVR, INC., DATED MARCH 28, 2012, RECORDED MARCH 29, 2012, BOOK 2403, PAGE 2222, IN THE REGISTER OF DEEDS OFFICE FOR GREENVILLE COUNTY, SOUTH CAROLINA.

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TMS No.: 0550.24-01-169.00

Property Address: 6 YOUNG HARRIS DR  
SIMPSONVILLE, SC 29681

AND IT IS SO ORDERED.

[JUDGE'S ELECTRONIC SIGNATURE PAGE TO FOLLOW]

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