

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N.A.,

PLAINTIFF,

vs.

Frank Cook a/k/a Frank W. Cook, Judith H. Cook and Ian Blake,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

C/A NO: 2012-CP-10-2651

**ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT**

FILED
2013 AUG -2 PM 2:36
JULIE J. ARMSTRONG
CLERK OF COURT

F12-01801

This is an action for foreclosure as to certain realty located in Charleston County. The summons and complaint were filed on April 20, 2012. The Defendants Frank Cook and Judith Cook filed an answer on May 9, 2012. The Defendants Frank Cook and Judith Cook filed a motion to rescind the order of reference on August 16, 2012. By order filed October 11, 2012, the motion to rescind the order of reference was denied. Plaintiff filed a reply dated October 30, 2012 and filed on November 8, 2012.

The Defendants Frank Cook and Judith Cook filed an appeal of the October 11, 2012 order. By order filed January 29, 2013, the appeal was dismissed on motion of Respondent (Plaintiff herein).

Plaintiff filed a motion for summary judgment on November 14, 2012 with supporting affidavits and memorandum of law. A hearing on the motion was held on May 24, 2013. Defendants' counsel argued that summary judgment should not be granted without the Defendants Frank Cook and Judith Cook being afforded an opportunity to conduct discovery. Defendants' counsel further stated that his clients would respond to the Plaintiff's outstanding discovery within two (2) weeks. Pursuant to a scheduling order filed May 28, 2013, the summary judgment motion was held open and to be heard within any other outstanding motions at a status conference on July 22, 2013. The scheduling order further provided that all discovery should be completed no later than July 19, 2013.

At the hearing held July 22, 2013, H. Guyton Murrell appeared as attorney for the Plaintiff and Dwayne Green appeared as attorney for Defendants Frank Cook and Judith

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SC Court of Appeals

Cook. The court heard arguments from both parties on the Plaintiff's motion for summary judgment.

The motion for summary judgment is based partly on the failure of defendants to cooperate with discovery. Plaintiff's counsel served Interrogatories and Request for Production of Documents on September 7, 2012. By letter dated October 16, 2012, Plaintiff's counsel requested that the overdue responses to the discovery request be provided within ten (10) days. The Defendants Frank Cook and Judith Cook responded the Plaintiff's Interrogatories on May 31, 2013. The response did not provide a list of alleged payments as requested and referenced documents that were not provided with the discovery response. The cover letter to the response stated that the response to the Plaintiff's Request for Production would be provided the following week. By letter dated June 7, 2013, Plaintiff's counsel again requested that the overdue response to the discovery request be provided within ten (10) days. At the hearing held on July 22, 2013, attorney for Defendants Frank Cook and Judith Cook provided a response to the request for production of documents. The response consisted of the note, mortgage and payment history that were exhibits to Plaintiff's motion for summary judgment. The Defendants' response did not provide any documentation for alleged payments. The Defendants Frank Cook and Judith Cook did not serve any discovery request on Plaintiff's counsel.

The Plaintiff filed and served on all parties a motion for summary judgment with supporting affidavit and memorandum of law. The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. McCall, 359 S.C. at 376, 597 S.E.2d at 183. The court finds that Plaintiff has established its right to summary judgment in this matter. The supporting affidavit filed by Plaintiff included a payment history and debt statement and established that the subject account is in arrears. The Defendants Frank Cook and Judith Cook did not file any counter or opposing affidavit or provide any documentation to dispute the allegations of the complaint and motion despite being served with discovery requesting such documents. Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Regions Bank v. Schmauch, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003). Rather, the nonmoving party must come

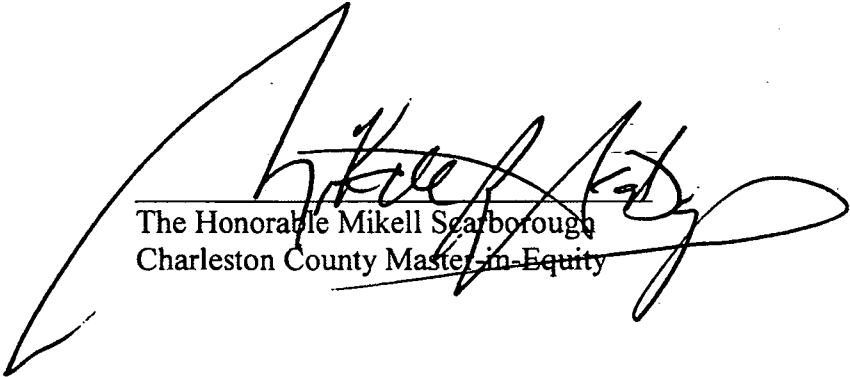
forward with specific facts showing there is a genuine issue for trial. Ellis v. Davidson, 358 S.C. 509, 595 S.E.2d 817 (Ct. App. 2004); Peterson v. West American Ins. Co., 336 S.C. 89, 518 S.E.2d 608 (Ct. App. 1999); Rule 56(c), SCRPC. In this case, the Defendants Frank Cook and Judith Cook did not provide any counter or opposing affidavits. Furthermore, Defendants Frank Cook and Judith Cook failed to cooperate with proper discovery requests that sought information and documentation to support the allegations of their responsive pleading.

The court finds that Plaintiff has met the burden of proof as set forth in applicable caselaw and Rule 56(e), SCRPC and the Motion for Summary Judgment is granted.

THEREFORE, IT IS HEREBY ORDERED that the Plaintiff's Motion for Summary Judgment is hereby granted,

IT IS FURTHER ORDERED that the case shall be scheduled for a hearing to update the judgment figures provided in affidavit of debt.

IT IS SO ORDERED.



The Honorable Mikell Scarborough
Charleston County Master-in-Equity

Charleston, South Carolina
7/21, 2013

JULIE J. ARMSTRONG

CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 108
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NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

Master/Master's Order Granting Plntff's mot for sum judg

CASE NO: 2012CP1002651

Bank of America N A VS Frank Cook , defendant, et al

This judgment was entered on the 02th day of August, 2013, and a copy mailed first class on Monday, August 05, 2013, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at www3.charlestoncounty.org.