

STATE OF SOUTH CAROLINA
COUNTY OF YORK

T.D. Bank, N.A.,

Plaintiff,

vs.

Glenda Jenkins, Doris G. Johnson, and The
South Carolina Department of Revenue,

Defendant(s).

IN THE COURT OF COMMON PLEAS

C/A NO.: 2012-CP-46-4406

**MASTER IN EQUITY'S ORDER OF
JUDGMENT OF FORECLOSURE AND
SALE DECREE**

(Non-Jury)

(Deficiency Waived)

(File No. 4028.06112)

S. Shye
RILEY POPE & LANEY, LLC
Attorneys for Plaintiff

SEP 23 2013

SC Court of Appeals

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DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC
SG

Pursuant to Rule 53 SCRCF, the above entitled matter was referred to the undersigned to make appropriate findings of fact and conclusions of law with authority to enter a final judgment in this cause without further order of court. Any appeal from this Order shall be directly to the South Carolina Court of Appeals.

Pursuant to said Order of Reference a hearing was held on July 22, 2013, attended by attorneys for the Plaintiff and; based upon the proof made of the facts and circumstances alleged in the pleadings, I find, conclude and order as follows:

FINDINGS OF FACT:

- 1) The Lis Pendens was filed on December 31, 2012.
- 2) The Summons and Complaint were filed on December 31, 2012.
- 3) Service was made upon the Defendants as shown by the proof of service filed herein.
- 4) The Defendants Glenda Jenkins and Doris G. Johnson are in default as shown by Affidavit, Notice, or Order filed herein.
- 5) The Defendants and 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, a good faith investigation did not determine that the defaulting property owners are in the military service and therefore entitled to

protection under the Servicemembers' Civil Relief Act (SCRA) of 2003, or any amendments thereto.

7) For value received, Raymond N. Dunham made, executed and delivered a note ("Note") dated July 3, 1996, promising thereby to pay to the order of Trans Financial Mortgage Company the sum of Eighty One Thousand Seven Hundred and 00/100 (\$81,700.00) Dollars, with interest at the rate of 8.500% per annum, with a current rate of 8.5000% per annum. Other terms and conditions are stated in the Note, which is of record herein.

8) To better secure the payment of the Note described above, Raymond N. Dunham made, executed, and delivered to Trans Financial Mortgage Company a certain real estate mortgage ("Mortgage") in writing, dated July 3, 1996, covering real property in York County, which is the same as that described in the Complaint. The Mortgage was filed in the Office of the Register of Mesne Conveyances/Register of Deeds for York County on July 5, 1996, in Book 1575 at Page 39. Thereafter, by assignment recorded in the said ROD Office on July 5, 1996 in Book 1575 at Page 46, the said Trans Financial Mortgage Company assigned said mortgage to Resource Bancshares Mortgage Group, Inc.; thereafter, by assignment recorded May 16, 1997 in Book 1853 at Page 40, the said Resource Bancshares Mortgage Group, Inc. assigned said mortgage to Carolina First Bank. This mortgage was modified by Loan Modification Agreement dated November 4, 1998. Thereafter, on September 30, 2010, Carolina First Bank merged into TD Bank, N.A.

9) The Mortgage evidences and secures the repayment of money advanced by the mortgagee to, or on behalf of, the mortgagors and constitutes a first mortgage lien on the mortgaged premises.

10) Thereafter, Raymond N. Dunham, conveyed a one-half (1/2) interest in the subject property to Grefonda L. Dunham, which deed was recorded on May 2, 1997 in Deed Book 1839 at Page 106.

11) Thereafter, Raymond N. Dunham and Grefonda L. Dunham conveyed the subject property to Glenda Jenkins and Doris G. Johnson, which deed was recorded on October 21, 2002 in Deed Book 4719 at Page 303; that the Defendants, Glenda Jenkins and Doris G. Johnson, are the owners and holders of record title to the real property hereinabove described as of the date of the filing of the Notice of Pendency to this action.

12) The Plaintiff is the real party in interest pursuant to SCRCP 17(a) and is entitled to enforce the terms of the subject Note and Mortgage.

13) The titleholders of record of the subject property as of the filing of the Lis Pendens in this action are Glenda Jenkins and Doris G. Johnson

14) Any notice required by the terms of the Note and/or Mortgage or by state or federal statutes has been given to the applicable Defendants prior to the commencement of this action.

15) The loan evidenced by the Note and Mortgage is not owned, securitized or guaranteed by Fannie Mae or Freddie Mac, and is not serviced by a servicer participating in the Home Affordable Modification Program (HMP)

16) As stated in the Certification of Exemption from Administrative Order 2011-05-02-01 filed herein, the real property which is the subject of this action is not an "owner occupied dwelling" as defined in the Order.

17) The Note payments which became due on August 1, 2012, and subsequent months, have 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 its attorney for collection by foreclosure.

18) The sum of \$1,800.00 is a reasonable fee to allow as attorney's fees for Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of this action, under the terms of the Note and Mortgage. The inclusion of services anticipated to be performed until final adjudication contemplates completion of this matter within a reasonable time and does not include exceptional circumstances delaying conclusion beyond the normal time.

19) The amount due and owing on the Note, with interest at the rate provided in the Note, and other costs and expenses of the within action, including an attorney's fee, secured by the Note and Mortgage, is as follows:

(a) Principal amount due as of August 1, 2012	\$68,054.34
(b) Interest from July 1, 2012 to February 28, 2013 at a current rate of 8.5000%	\$3,802.25
Interest from February 28, 2013 to July 22, 2013 at a current rate of 8.5000%	\$2,282.40
(c) Advances	
NSF Fee	\$20.00
BPO Fee	\$52.35
Property Inspection	\$181.50
Transfer Balance	\$1,322.60
Funds owed by Borrower	\$1,005.52
(d) Late charges	\$236.07
(e) Costs of collection prior to hearing (service of process, filing fees, etc.	\$936.50
(f) Attorneys Fee	\$1,800.00
Total debt secured by Note and Mortgage, including interest to date shown	\$79,693.53

Interest for the period from the date shown in (b) above through the date of this judgment at 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 rate of 8.5000% 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.

20) The Plaintiff is seeking the usual foreclosure of the mortgage and has in the Complaint, or subsequently thereto in writing, expressly waived the right to a personal or deficiency judgment pursuant to Rule 71(b) SCRPC.

21) The following Defendants claim or may claim a lien upon or interest in the subject property or are otherwise involved in this matter. In the event there is a surplus from the sale of the subject property, the validity, priority and amount of such liens will be determined at a hearing subsequent to the sale, in accordance with Rule 71(c), SCRPC. The Clerk of Court/Register of Deeds is hereby ordered to release said liens in so much as it pertains to the property which is the subject of this action:

The South Carolina Department of Revenue by virtue of any liens of record, including, but not limited to, a Tax Lien or Warrant for Distraint against Doris G. Johnson dba The Learning Tree, bearing Tax Lien/Warrant No. 3-51387078-0 and File/Identifying No. 25290459, in the amount of \$4,707.33, dated March 19, 2012, and recorded on March 28,

2012 in Vol 222 at Page 294. Any such interest in or lien upon the said property is junior and subordinate to Plaintiff's mortgage.

The South Carolina Department of Revenue by virtue of any liens of record, including, but not limited to, a Tax Lien or Warrant for Distraint against Doris G. Johnson dba The Learning Tree, bearing Tax Lien/Warrant No. 3-51420906-0 and File/Identifying No. 25290459, in the amount of \$798.50, dated June 18, 2012, and recorded on June 26, 2012 in Vol 235 at Page 283. Any such interest in or lien upon the said property is junior and subordinate to Plaintiff's mortgage.

The South Carolina Department of Revenue by virtue of any liens of record, including, but not limited to, a Tax Lien or Warrant for Distraint against Doris G. Johnson dba The Learning Tree, bearing Tax Lien/Warrant No. 3-51505192-9 and File/Identifying No. 25290459, in the amount of \$863.83, dated December 4, 2012, and recorded on December 13, 2012 in Vol 261 at Page 133. Any such interest in or lien upon the said property is junior and subordinate to Plaintiff's mortgage.

CONCLUSIONS OF LAW

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

- 1) The Plaintiff's Mortgage should be declared a first mortgage lien and Plaintiff should have judgment of foreclosure of the mortgage and the mortgaged property should be ordered sold at public auction after due advertisement.
- 2) The Court finds that there are no HAMP issues to be resolved before foreclosure is ordered or the sale is commenced.
- 3) The Court also finds the real property is not an "owner occupied dwelling" as defined in the May 2, 2011 Administrative Order, and is therefore exempt from said Order.
- 4) The Defendants named herein, and all persons whosoever claiming under Defendants, are forever barred and foreclosed of all right, title, interest, equity of redemption or lien in the said mortgaged premises so sold, or any part thereof.
- 5) Pursuant to Rule 53, SCRPC, this Order shall constitute a final judgment.

6) There is due to the Plaintiff on the Note and Mortgage set forth in the Complaint the sum of \$79,693.53, as set out in the Findings of Fact *supra*.

7) The amount due in the preceding paragraph (the "Total Debt" as set out in the Findings of Fact *supra*, and later accrued interest on the principal), shall constitute the total judgment debt due Plaintiff and shall bear interest hereafter at the rate of 8.5000% per annum. The amount of the judgment shall be subject to increase to permit the Plaintiff to recover additional costs, commissions and expenses not included in the judgment figures set forth herein. It may also increase to include supplemental compensation for attorney's services not contemplated by the initial fee awarded. Jurisdiction over the fee award and total debt is reserved to facilitate the assessment and payment of any such costs and/or supplemental compensation. Such additional costs, commissions and expenses may be established by statement and shall be adjudicated by the Court without further finding.

8) The Defendants liable for the aforesaid judgment debt including interest at the rate of 8.5000% per annum 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.

9) On default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, as hereinafter set forth, shall be sold by the Master in Equity, at public auction, at the County Courthouse in York, South Carolina, at 11:00 a.m., on some convenient sales day hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event, the sales day shall be on some other day appointed by the Court), on the following terms, that is to say:

10) For cash: The Master in Equity, will require, at the time of the bid, a deposit of 5% of the amount of the bid (in cash or equivalent) same to be applied to purchase price if compliance is made, but in the event of non-compliance, the deposit may be forfeited without further hearing and applied first to the costs of the action and then to plaintiff's debt. Should the successful bidder at the regularly conducted sale fail or refuse to make the required deposit at time of bid or comply with the other terms of the bid within twenty (20) days, then the property may be re-sold on the same terms and conditions on some subsequent Sales Day, but at the risk of the defaulting bidders.

11) Interest on the balance of the bid shall be paid through the day of compliance at the rate of 8.5000%.

12) Purchaser shall pay for any statutory commission on sale from the proceeds of sale, deed preparation, costs of recording the deed, and deed stamps, and interest on the amount of the bid from the date of sale to the date of compliance with the bid at the rate of 8.5000%.

13) A 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.

14) The Master in Equity, will, by advertisement according to law, give notice of the time and place of such 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 if, upon such sale being made, the purchaser, or purchasers, should fail to comply with the terms thereof within twenty (20) days after the conclusion of the bidding, then the Master in Equity, 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.

15) 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 day upon the terms and conditions as set forth in this Judgment of Foreclosure and Sale or such terms as may be set forth in a supplemental order.

16) If Plaintiff is the successful bidder at the sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of Plaintiff in full, Plaintiff may pay to the Master in Equity, only the amount of the costs and expenses crediting the balance of the bid on Plaintiff's indebtedness.

17) The Master in Equity will apply the proceeds of the sale as follows:

FIRST: To the 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 (including attorney fees) or so much thereof as the purchase money will pay on the same;

NEXT: Any surplus should be held pending further Order of this court.

18) In the event the successful bidder is other than the Defendants in possession of the subject property, upon full compliance and title by deed from the Court vested into such purchaser, and upon issuance of a Writ of Assistance by the Court, the Sheriff of York 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 purchaser 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. All valid tenant rights shall be protected pursuant to the Protecting Tenants at Foreclosure Act of 2009.

19) In the event the successful purchaser is someone other than the Defendants in possession of the subject property, and the occupants have voluntarily vacated the property or have been ejected from the property leaving furnishings, fixtures and items not subject to Plaintiff's Mortgage in said property, and title by deed from the Court is vested into such purchaser, the Purchaser is authorized to remove from the property all furnishings, fixtures and items not subject to the lien of Plaintiff's Mortgage. The personal property, being deemed abandoned, shall be removed by the Purchaser or its agents from the subject property by placing said property on the public street or highway or by any other means.

20) In accordance with S.C. Code Ann. §30-9-31, the deed of conveyance made pursuant to said sale shall be indexed by the R.M. C. in the name of the owner of record of subject property immediately prior to execution of the deed, as well as in the name of the Master in Equity, who executes such deed as grantor.

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

22) The following is a description of the premises herein ordered to be sold:

All that certain piece, parcel or lot of real property, with any and all improvements that might be situate and located thereon, lying and being on the Northeastern side of Greenbrier Avenue, City of Rock Hill, York County, South Carolina, and being known as 636 Greenbrier Avenue, Rock Hill, South Carolina, containing 0.380 acres, more or less, and being more fully set forth, shown and described in a plat of survey entitled "Property Surveyed for Raymond N. Dunham", prepared by J.B. Fisher, SCRLS, dated June 27, 1996, and recorded in Record Book 132 at Page 398, R.M.C. Office for York County, S.C. said plat being incorporated herein by reference thereto as a part of this description.

Being the same property conveyed unto Raymond N. Dunham by deed from Roy E. Wallace dated July 3, 1996 and recorded July 5, 1996 in Deed Book 1575 at Page 36

in the Office of the Clerk of Court for York County, South Carolina. Thereafter, Raymond N. Dunham, conveyed a one-half (1/2) interest in the subject property unto Grefonda L. Dunham by deed dated May 1, 1997 and recorded on May 2, 1997 in Deed Book 1839 at Page 106. Thereafter, Raymond N. Dunham and Grefonda L. Dunham conveyed the subject property unto Glenda Jenkins and Doris G. Johnson by deed dated September 24, 2002 and recorded on October 21, 2002 in Deed Book 4719 at Page 303 in said Clerk of Court's Office.

TMS No. 632-09-03-014

Property Address: 636 Greenbriar Avenue, Rock Hill, SC 29730

S/S JACKSON KIMBALL

Honorable S. Jackson Kimball
Master in Equity York County

July 22, 2013
York, South Carolina

COPY

6/26/2013 10:10:10

SCANNED

JUL 26 2013