

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

PennyMac Loan Services, LLC,

Plaintiff,

v.

Judith A. Kelly; Judith-Ann Kelly as co-trustee of Judith Ann Kelly Family Trust; Ann Cornell as cotrustee of Judith Ann Kelly Family Trust; South Brook Community Association, Inc.

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2023-CP-32-02327

JUDGMENT OF FORECLOSURE AND SALE

Deficiency Judgment Waived

RECEIVED

OCT 31 2025

SC Court of Appeals

Sean M. Foerster, Esquire
Attorney for the Plaintiff

Pursuant to Rule 53, SCRCF, the above-entitled matter was referred to the undersigned as Special Referee. A final foreclosure hearing and a hearing on all outstanding motions was held on October 22, 2025, at 2:00 p.m. Evidence was presented, which is reported herewith, and from the evidence, I find and conclude¹ as follows:

1. Plaintiff filed the Lis Pendens, Summons, and Complaint on June 20, 2023.
2. Service was made upon all Defendants as shown by the proof of service filed herein.
3. Defendants Ann Cornell as co-trustee of Judith Ann Kelly Family Trust and South Brook Community Association, Inc., are in default for failure to plead or otherwise respond to the Complaint.
4. Judith A. Kelly appeared *pro se* in this action.
5. Defendant Judith A. Kelly, individually and as co-trustee of Judith Ann Kelly Family Trust, is not in the Military Service of the United States of America, as contemplated under The Servicemembers Civil Relief Act, 50 U.S.C. 3901 *et seq.* as shown by affidavit filed herein.
6. All Defendants and all attorneys of record were notified of the time, date, and place of the hearing by letter and certificate of mailing of record herein. The hearing was properly

¹ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate.

noticed as both a final foreclosure hearing and a hearing on all outstanding motions.

7. No Defendant appeared at the hearing despite being properly noticed.

8. Defendant Judith A. Kelly, *pro se*, in her individual capacity and as co-trustee of the Judith Ann Kelly Family Trust, filed various documents in this case purporting to respond to the Complaint, along with numerous motions and other filings throughout this case. Ms. Kelly also filed a motion for a continuance two days before the scheduled hearing date, but failed to provide adequate support for the basis of that motion and the Court therefore denied it. Ms. Kelly was provided with adequate notice of the hearing and an opportunity to be heard in a meaningful way on each of her filings, but neither she nor anyone on her behalf appeared at the hearing. Based on the evidence presented at trial and the arguments of Plaintiff's counsel, the Court finds that all of Ms. Kelly's motions, defenses, and claims filed through the date of this judgment lack merit. Accordingly, the Court grants judgment in favor of Plaintiff on each of and every one of them.

9. After carefully considering the evidence and arguments presented, including the witness testimony of Stephanie Cejas, a supervisor of foreclosure operations for PennyMac Loan Services, LLC, I find that Plaintiff is entitled to a judgment of foreclosure and sale.

10. Judith A. Kelly for value received, made, executed and delivered a fixed rate promissory note ("Note") dated May 27, 2022, promising thereby to pay to Plaintiff or its predecessor the sum of \$240,562.00 with interest at 5.625% per annum. Other terms and conditions are stated in the Note, a copy of which is of record herein.

11. To better secure the payment of the Note described above, Judith A. Kelly made, executed, and delivered to Mortgage Electronic Registration Systems, Inc., as mortgagee and nominee for CrossCountry Mortgage, LLC, its successors and assigns, a certain real estate Mortgage dated May 27, 2022, and encumbering real property in Lexington County, which is the same as that described in the Complaint. This Mortgage was recorded on May 27, 2022, in the Office of the Register of Deeds for Lexington County in Book 21010 at Page 450. This Mortgage was assigned to PennyMac Loan Services, LLC, by Assignment of Mortgage dated May 15, 2023, and recorded on May 15, 2023, in the Office of the Register of Deeds for Lexington County in Book 21057 at Page 257.

12. This Mortgage constitutes a purchase money first priority lien on the subject property, subject only to ad valorem taxes or other liens given priority by statute.

13. Plaintiff has the legal right to enforce the Note and the Mortgage at issue and is the

real party in interest as defined by Rule 17(a), SCRCF, with legal standing to pursue this foreclosure action.

14. Plaintiff established that the Note is in default for a failure to make the January 1, 2023, payment and all subsequent payments thereafter.

15. Payment due on the Note was not made as provided for therein, and Plaintiff, as the holder thereof, elected to require immediate payment of the entire amount due thereon and placed the Note and Mortgage in the hands of the attorney herein for remedy by foreclosure.

16. The sum of \$15,278.50 is a reasonable fee to allow Plaintiff's counsel for services performed and anticipated to be performed until final adjudication of this action, under the terms of the Note and Mortgage. This fee is likewise reasonable based on the time necessarily devoted to representation of Plaintiff during the several month course of these proceedings. The services of counsel performed for Plaintiff, which include the number and types of pleadings and documents prepared, the incumbent liabilities, and the difficulties involved in this particular case also support the fee awarded. The fee is also reasonable given the professional standing of Plaintiff's counsel and their experience in handling foreclosure matters. The fee awarded herein is also reasonable in light of the fees customarily awarded by this court for similar services in this locality. Moreover, the efforts of Plaintiff's counsel have had the beneficial result of a foreclosure of the Mortgage. Services anticipated to be performed until final adjudication contemplate completion of this matter within a reasonable time and does not include exceptional circumstances delaying conclusion beyond the normal time.

17. According to Plaintiff's accounting, after all payments received by Plaintiff have been credited to the subject loan account, the amount due and owing on the Note, with interest at the rate provided in the Note, advances made by Plaintiff, and other costs and expenses of the action, including a reasonable attorney's fee, all secured by the Note and Mortgage, is as follows:

- (a) Principal\$237,965.01
 - (b) Interest from 12/01/2022 through
10/22/2025 at 5.625% per annum\$38,637.80
 - (c) Allowable Escrow Advances (Escrow advances\$13,884.69
- County Taxes\$3,877.13
Homeowners Insurance.....\$4,503.00
Mortgage Insurance\$6,547.00

	Credit for Escrow Paid 6/2022- 12/2022	(\$2,962.44)
(d)	Title Abstract Fee.....	\$1,000.00
(e)	Property Inspection Fees.....	\$920.00
(f)	Pre-acceleration Late Charges	\$221.56
(g)	Reasonable Attorney’s fees.....	\$15,278.50
(h)	Reasonable Costs of this Action.....	\$1,911.53
	TOTAL debt secured by Note and Mortgage, including interest to date shown	\$307,899.09

Interest shall accrue to the above stated “Total Debt” after the date of judgment at the rate of 5.625% per annum (pursuant to the terms of the Note and purchase money first Mortgage). Accrued interest shall be added to the “Total Debt” and shall comprise the amount of the Plaintiff’s debt secured by the purchase money first Mortgage through the date to which such interest is computed.

18. Plaintiff is seeking the usual foreclosure of the purchase money first mortgage and has in the Complaint (or subsequently thereto in writing) expressly waived the right to a personal or deficiency judgment.

19. The following Defendant may claim a subordinate lien upon or subordinate legal interest in the subject property and, in the event there is a surplus from the sale of the subject property, this Defendant may present through any such lien or legal interest a claim to the surplus at a hearing subsequent to the sale, in accordance with Rule 71(c), SCRCP. The said Defendant and such liens or legal interests are as follows:

a. South Brook Community Association, Inc. by virtue of any lien enforceable assessments claimed as provided for in the Declaration of Covenants, Conditions, and Restrictions recorded herein, and any amendments thereto. Also including any other liens it may have.

IT IS THEREFORE ORDERED:

1. There is due to the Plaintiff on the Note and purchase money first Mortgage set forth in the Complaint the sum of \$307,899.09 dollars, 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.

2. The amount due in the preceding paragraph (the "Final Total Debt" as set out in the Findings of Fact *supra*) shall accrue interest at the rate of the respective note rate(s) per annum and together with such interest shall constitute the total judgment debt due Plaintiff.

3. The amount of the judgment shall be subject to increase to permit Plaintiff to recover additional costs, commissions, and expenses not included in the minimum deposit previously made in compliance with S.C. Code Ann. § 14-11-310 (1976). It may also increase to include supplemental compensation for attorneys' services not contemplated by the initial fee award. Jurisdiction over the fee award and total debt is reserved to facilitate the assessment and payment of any such costs or supplemental compensation. Such additional costs, commissions and expenses may be established by affidavit and shall be adjudicated by the court without further hearing.

4. The Defendant(s) liable for the aforesaid judgment debt of the Note and Mortgage including interest at the rate of 5.625% per annum shall pay on or before the date of sale of the property hereinafter described, to Plaintiff or Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, including with the costs and disbursements of this action. On default of payment at or before the time of the sale of the property, the mortgaged property described hereinafter shall be sold by the below signed Special Referee or other court-appointed or designated agent or auctioneer at public auction at the Lexington County Judicial Center, in the City of Lexington, and State of South Carolina on a sales day determined by the below signed Special Referee, on the following terms:

a. For cash or its equivalent: An immediate deposit of 5% is required on the amount of the bid by no later than 4:00 p.m. on the day of the sale. The deposit will be applied to the purchase price when total compliance is made. In the event compliance is not made, the deposit shall be forfeited without further hearing and applied first to costs and expense of the action and then to plaintiff's debt. Should the successful bidder at the regularly conducted sale fail or refuse either to make the required deposit at time of bid or to comply with the other terms of the bid within 20 days, then the property may be re-sold on the same terms and conditions on the same or some subsequent sales day and at the risk of the defaulting bidder.

b. Interest on the balance of the bid after the deposit is applied shall be

paid through the day of compliance at the Note rate of 5.625%.

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

d. Purchaser shall pay for any statutory commission on sale from the proceeds of the final bid amount.

e. Purchaser to pay for deed preparation, costs of recording the deed, and transfer taxes on the deed.

f. Purchaser shall be entitled to possession of the premises only after Purchaser fully complies with the bid amount and a deed is issued by the Master in Equity or Special Referee.

5. 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.

6. Plaintiff may waive any of its rights, in accordance with Rule 71, SCRCR, prior to sale.

7. The Special Referee will give notice of the time and place of the sale by advertisement according to law and the terms thereof by advertisement according to law and will execute to the Purchaser a deed to the property sold. Plaintiff or any other party to this action may become a purchaser at such sale. If, upon such sale being made, the Purchaser should fail to comply with the terms thereof within 20 days after date of sale, then the Special Referee 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. In the event an agent of 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 same 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.

9. If Plaintiff is the successful bidder at the said sale for a sum not exceeding the amount of costs and expenses of the sale, plus the indebtedness of Plaintiff in full, Plaintiff may pay to the Special Referee only the amount of the costs and expenses crediting the balance of the bid on Plaintiff's indebtedness.

10. The Special Referee will apply the proceeds of the sale as follows:

FIRST: To the payment of the permitted costs, charges, and expenses of this action, including any Guardian ad Litem fee, Servicemember Civil Relief Act attorney fee, or any other attorney's fees awarded under this or any other Order of this Court;

NEXT: To the payment to Plaintiff or Plaintiff's attorney of the amount of Plaintiff's debt and interest or so much thereof as the purchase money will pay on the same; and the Plaintiff's attorney shall receive and disburse such funds only in absolute compliance with Plaintiff's principal, interest allowable advances, and related calculations of this Court, including the Court's award for attorney fees, court permitted charges and taxable costs pursuant to Rules 54 and 71 of the South Carolina Rules of Civil Procedure and the terms of the Note and Mortgage;

NEXT: Any surplus will be held pending further Order of the Court as provided for in the South Carolina Rules of Civil Procedure, particularly Rule 71(c), SCRPC.


11. In the event the successful bidder is someone other than the Defendant(s) in possession of the subject property, the Sheriff of Lexington County is ordered and directed to eject and remove from the property the occupant(s) of the property sold, together with all personal property located thereon, and put the successful bidder or his assigns in full, quiet, and peaceable possession of said property without delay, and to keep said successful bidder or his assigns in such peaceable possession.

12. In the event the successful bidder is other than the Defendant(s) 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, 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 personal property on the public street or highway or by any other means.

13. The Defendant(s) named herein, and all persons whosoever claiming under Defendant(s), is forever barred and foreclosed of all right, title, interest, equity of redemption or lien in the said mortgaged property so sold, or any part thereof.

14. In accordance with Rule 77(d), SCRPC, the Clerk of Court shall serve a notice of entry of this Judgment of Foreclosure upon all parties not in default for failure to appear in this action.

15. The deed of conveyance made pursuant to the foreclosure sale shall contain the

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names of only the first-named Plaintiff and the first-named Defendant(s), and the Defendant(s) who was/were the titleholder(s) of the mortgaged property at the time of the filing of the notice of pendency of the within action, and the name of the grantee. The Register of Deeds/Clerk of Court is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

16. IT IS FURTHER ORDERED 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 holding record title and in possession herein, the Sheriff of Lexington County is hereby ordered and directed to eject and remove from the premises the named Defendants holding record title to 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.

17. IT IS FURTHER ORDERED that in the event the successful bidder to whom the deed of conveyance has been issued subsequent to the sale is other than the named Defendants, holding record title and in possession herein, and the property remains occupied by a person or persons holding or claiming to hold the property under lease from the record title holders, or who otherwise may have rights or protections under Federal or State statutes protecting such lessees, the Sheriff of Lexington County shall only be ordered and directed to eject and remove from the premises those occupants under the terms stated above, after a hearing as directed by this court and under such order or writ as may be issued by this court as deemed equitable under the circumstances.

18. 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.

19. The following is a description of the property herein ordered to be sold:

All those certain pieces, parcel or lots of land, with improvements thereon, if any, situate, lying and being in the County of Lexington, State of South Carolina and being shown and designated as Lot 305 on a plat of Southbrook Subdivision, Phase 9B, prepared by Belter & Associates, Inc. dated 12/12/2013, last revised 11/19/15, and recorded in the Office of the ROD for Lexington County in Book 18056 at Page 321. Reference is being made to said plat for a more complete and accurate description. Be all measurements a little more or less.

This being the same property conveyed to Judith A. Kelly by deed of Brandon Tye Sharpe and Edna Maregmen Sharpe, dated May 27, 2022, and recorded in Book 21010 at Page 448 in the Register of Deeds Office for Lexington County; thereafter, Judith A. Kelly conveyed her interest in the subject property to Judith-Ann Kelly and Ann Cornell as trustees of Judith Ann Kelly Family Trust by Quit Claim Deed dated January 25, 2023, and recorded March 16, 2023, in Deed Book 21048 at Page 5791, and also shown by the Certificate of Trust dated March 15, 2023, and recorded March 15, 2023, in Book 21048 at Page 5422.

Property Address: 408 Cannongate Court
Lexington, SC 29073

TMS/PIN# 006416-01-275



J. Kershaw Spong
Special Referee