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FORM 4

**SC Court of Appeals**

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2011-CP-29-00035

H&R Block Bank, FSB

Ziraili M. Elbey a/k/a Ziraili Mohassan El Bey, WKFC  
Living Trust Under Trust Agreement Dated June 4, 2010  
by and through its Trustee Wellesley K. Clayton and  
American Home Mortgage Servicing, Inc. s/b/m to Option  
One Mortgage Corporation

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: <u>Brock &amp; Scott, PLLC</u> <u>Westpark Center</u> <u>3800 Fernandina Road Suite 110</u> <u>Columbia, SC 29210</u>	Attorney for : <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
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FILED  
 OFFICE OF CLERK  
 OF COURT  
 2013 NOV 14 PM 3:57  
 CLERK OF COURT  
 LANCASTER, 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 JUDGMENT 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: All that certain piece, parcel or lot of land located in Lancaster County, South Carolina, and being designated as Lot 261 on that certain Plat of Clairemont, Phase 2, Map 5, prepared by Yarbrough, Williams & Houle, Inc. dated January 18, 2005, and recorded January 28, 2005, as Plat Doc #2005 at Page 0047 in the Office of the Clerk of Court for Lancaster County, South Carolina.  Also being shown as Lot 261 of Clairemont on a Plat of Ziraili Elbey prepared by Hucks and Associates, PC, dated		

March 3, 2006, and recorded in Plat Doc 2006 at Page 198.

This being the identical property conveyed to Ziraili M. Elbey by deed from The Ryland Group, Inc. dated March 29, 2006 and recorded April 7, 2006 in Book 329 at Page 170. Subsequently, said property was conveyed to KMJ Trust, dated December 15, 2006 (Trustees: Ziraili Mohassan El Bey and Mark Antonio Findletter Clayton) by Deed of Ziraili M. Elbey dated January 19, 2007 and recorded January 29, 2007 in Book 378 at Page 7. Thereafter, the property was conveyed to WFKC Living Trust Under the Provisions of a Trust Agreement Dated June 4, 2010 (Trustee: Wellesley K. Clayton) by deed of Ziraili Mohassan El Bey and Mark Antonio Findletter Clayton as Trustees of The KMJ Trust, dated December 15, 2006 dated June 11, 2010 and recorded June 22, 2010 in Book 569 at Page 85.

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.

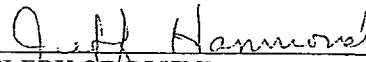
  
Circuit Court Judge 50 Judge Code \_\_\_\_\_ Date 11/13/13

**For Clerk of Court Office Use Only**

This judgment was entered on the 14 day of Nov, 2013 and a copy mailed first class or placed in the appropriate attorney's box on this 14 day of Nov, 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Brian L. Campbell, SC Bar No. 074521  
Suzanne E. Brown, SC Bar No. 076440  
Jason L. Branham, SC Bar No. 072902  
Chad W. Burgess, SC Bar No. 072520  
J. Marshall Swails, SC Bar No. 079067  
Sarah O. Leonard, SC Bar No. 080165  
J. Martin Page, SC Bar No. 100200  
Brook D. Dangerfield, SC Bar No. 077912  
Travis E. Menk, SC Bar No. 079144  
Richard G. Duerinckx, SC Bar No. 070143  
Caroline R. Glenn, SC Bar No. 077157  
\_\_\_\_\_  
ATTORNEY(S) FOR THE PLAINTIFF(S)

Ziraili M. Elbey a/k/a Ziraili Mohassan El Bey,  
WKFC Living Trust Under Trust Agreement Dated  
June 4, 2010 by and through its Trustee Wellesley K.  
Clayton and American Home Mortgage Servicing,  
Inc. s/b/m to Option One Mortgage Corporation  
\_\_\_\_\_  
ATTORNEY(S) FOR THE DEFENDANT(S)

  
\_\_\_\_\_  
CLERK OF COURT

Court Reporter:

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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DEC 02 2013

STATE OF SOUTH CAROLINA  
COUNTY OF LANCASTER

SC Court of Appeals

COURT OF COMMON PLEAS  
CASE NO.: 2011-CP-29-00035

H&R Block Bank, FSB

Plaintiff,

v.

Ziraili M. Elbey a/k/a Ziraili Mohassan El Bey,  
WKFC Living Trust Under Trust Agreement  
Dated June 4, 2010 by and through its Trustee  
Wellesley K. Clayton and American Home  
Mortgage Servicing, Inc. s/b/m to Option One  
Mortgage Corporation,

Defendant(s)

SUPPLEMENTAL SPECIAL REFEREE'S  
REPORT  
AND JUDGMENT OF FORECLOSURE AND  
SALE

DEFICIENCY WAIVED

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OF COURT  
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CLERK OF COURT  
LANCASTER, SC

Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure (hereinafter "SCRCP"), the above-entitled matter was referred to the undersigned Special Referee to make appropriate findings of fact and conclusions of law, with authority to enter a final Judgment in the cause. Any appeal from the decision of the Special Referee shall be directly to the South Carolina Supreme Court.

Pursuant to the said reference, a hearing was held on August 22, 2012, attended by Brock & Scott PLLC, attorney for the Plaintiff, and a *Special Referee's Order and Judgment of Foreclosure and Sale* was entered on August 22, 2012 (hereinafter: "Original Judgment"). Subsequent to said hearing, the Defendant filed bankruptcy causing the foreclosure sale to be canceled. Said bankruptcy was discharged and Plaintiff now wishes to proceed to foreclosure sale.

A supplemental hearing was held on October 24, 2013, for the purpose of updating the debt due to the Plaintiff and setting a foreclosure sale date, a hearing was held, attended by the attorneys of record, the testimony was taken, which is reported herewith, and from the testimony and evidence, I find and conclude as follows:

At the call of the case, counsel for the Plaintiff appeared. The Defendant appeared pro se. Wellesley K. Clayton also appeared. While he indicated he was not a party, I find that he is one and the same

Wellesley K. Clayton named in the caption as the Trustee on an instrument filed by the Defendant during this proceeding. He did not participate in the proceedings.

The Defendant has filed numerous documents with the Clerk of Court and with the Special Referee. The documents filed by the Defendant proclaim that the Defendant is a natural person, that she is not subject to the jurisdiction of the Court, that she has assigned her interest and the note and mortgage to another entity, to wit a Trust named in the Complaint as a party and that her mortgage has been satisfied by the holder of the Trust.

The documents filed by the Defendant are not proper pleadings under the laws of this State. The Answer of the Defendant was an avoidance of the action, not a legal Answer. Her Answer and subsequent filings raised no legal challenge to the right of the Plaintiff to foreclose the mortgage signed by the Defendant.

The Defendant's filings purport to place the Defendant in some protected category of persons that are not subject to the jurisdiction of the Court. The Defendant challenges the power of the Court over her and the Plaintiff's standing to sue her and her alleged inherent right to maintain possession and ownership of the subject real property despite the fact that she has not paid the Plaintiff under the terms of the agreement.

I find that the documents filed by the Defendant constitute sham pleadings and are intended only to delay and unreasonably dispute the legal process of the Court. The Defendant is governed by the same rules of law and evidence as all other persons who enjoy the benefits of liberty and justice under the system of law that governs the United States of America. The Defendant's attempts to declare herself above the law are a mockery of the system and the Courts.

I heard evidence from both the Plaintiff and the Defendant. The Plaintiff established its right to obtain an Order from this Court requiring that the lien on the property owned by the Defendant be foreclosed. I find that the efforts of the Defendant to divest herself of title or to transfer the property to other entities in an effort to make her in some way immune from the power of the Court to be of no effect and void.

The Defendant is still the record owner of the subject property and as such is the only proper Defendant in this action.

The arguments made by the Defendant at the hearing were primarily aimed at standing and jurisdiction. I determined that none of those arguments were of sufficient legal meaning to delay this proceeding from its legal final result, the foreclosure of the mortgage on the Defendant's home.

FINDINGS OF FACT:

1. 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 \$4,200.00 is a reasonable attorney's fee for the Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of the within action, under the terms of the note and mortgage. Services anticipated to be performed until final adjudication contemplates completion of this matter within a reasonable time and does not include exceptional, unanticipated circumstances delaying conclusion beyond the normal time.

2. 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 collection, including attorney's fees, secured by the Note and Mortgage, is as follows:

Principal due as of today's date:	10/24/13		\$189,911.32
Accrued interest from:	01/02/10	to: 10/24/13	\$ 55,350.18
Accruing at:	7.999% per annum		
Advancements to Escrow			\$ 5,646.55
Corporate Advances			\$ 367.45
Late charges:			\$ 1,953.18
Other charges:			\$ 0.00
Costs of collection prior to hearing:			\$ 2,506.85
Attorney's fees:			\$ 4,200.00

Total Debt secured by note and mortgage, including interest to date is \$259,935.53.

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 7.999% 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 the Plaintiff's debt secured by the mortgage through the date to which such interest is computed.

3. The Plaintiff is seeking foreclosure of its 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.

CONCLUSIONS OF LAW: I, therefore, conclude as follows:

1. The Plaintiff should have judgment of foreclosure of its mortgage; and the mortgaged property should be ordered sold at public auction after due advertisement.
2. That there is due to the Plaintiff on its note and mortgage the sum of \$259,935.53. representing the Total Debt due to the Plaintiff as outlined above, together with interest thereon at the rate provided in the note to the date hereof.
3. That the amount due in the preceding paragraph (the "Total Debt") and later accrued interest and costs shall constitute the total judgment debt due to the Plaintiff and shall bear interest hereafter at the rate of 7.999% per annum.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. That the Defendants 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 as aforesaid, together with the costs and disbursements of this action.
2. That on default of payment prior to the date and time of the sale, the mortgaged premises, hereinafter described, shall be sold by the undersigned Special Referee at public auction, at the Lancaster County Courthouse, in the City of Lancaster, County and State aforesaid, on some convenient sales day hereafter, on the following terms, that is to say:
  - A. FOR CASH: The undersigned Special Referee 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 thirty (30) the same to be forfeited and applied to the costs and then to the Plaintiffs debt.

B. Interest on the balance of the bid shall be paid to the day of compliance at the rate of 7.999% 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.

3. 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 Special Referee only the amount of the costs and expenses, crediting the balance of the bid on the Plaintiff's indebtedness.

4. 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.

5. That the undersigned Special Referee 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 premises sold. The Plaintiff, or any other party to this action, or any other person may become a purchaser at such sale. Upon such sale being made, should the successful bidder, or his assignee, fail to comply with the terms thereof within thirty (30) after the date of sale, then the undersigned Special Referee may re-advertise the 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.

6. 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.

7. That the undersigned Special Referee shall 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; and

NEXT: 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 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), SCRC.

8. That it is further ORDERED, ADJUDGED AND DECREED that each Defendant 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.
9. 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, 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 Lancaster 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.
10. It is further ORDERED, ADJUDGED AND DECREED 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 in possession herein, the Sheriff of Lancaster County may be 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 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.
11. That it is further ORDERED ADJUDGED AND DECREED that after the Order Confirming Sale and Disbursements has been issued and filed, the undersigned Special Referee 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.
12. That it is further ORDERED ADJUDGED AND DECREED that the following is a description of the premises herein ordered to be sold:

ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND LOCATED IN LANCASTER COUNTY, SOUTH CAROLINA, AND BEING DESIGNATED AS LOT 261 ON THAT CERTAIN PLAT OF CLAIREMONT, PHASE 2, MAP 5, PREPARED BY YARBROUGH, WILLIAMS & HOULE, INC. DATED JANUARY 18, 2005, AND RECORDED JANUARY 28, 2005, AS PLAT DOC #2005 AT PAGE 0047 IN THE OFFICE OF THE CLERK OF COURT FOR LANCASTER COUNTY, SOUTH CAROLINA.

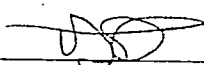
ALSO BEING SHOWN AS LOT 261 OF CLAIREMONT ON A PLAT OF ZIRAILI ELBEY PREPARED BY HUCKS AND ASSOCIATES, PC, DATED MARCH 3, 2006, AND RECORDED IN PLAT DOC 2006 AT PAGE 198.

THIS BEING THE IDENTICAL PROPERTY CONVEYED TO ZIRAILI M. ELBEY BY DEED FROM THE RYLAND GROUP, INC. DATED MARCH 29, 2006 AND RECORDED APRIL 7, 2006 IN BOOK 329 AT PAGE 170. SUBSEQUENTLY, SAID PROPERTY WAS CONVEYED TO KMJ TRUST, DATED DECEMBER 15, 2006 (TRUSTEES: ZIRAILI MOHASSAN EL BEY AND MARK ANTONIO FINDLETTER CLAYTON) BY DEED OF ZIRAILI M. ELBEY DATED JANUARY 19, 2007 AND RECORDED JANUARY 29, 2007 IN BOOK 378 AT PAGE 7. THEREAFTER, THE PROPERTY WAS CONVEYED TO WFKC LIVING TRUST UNDER THE PROVISIONS OF A TRUST AGREEMENT DATED JUNE 4, 2010 (TRUSTEE: WELLESLEY K. CLAYTON) BY DEED OF ZIRAILI MOHASSAN EL BEY AND MARK ANTONIO FINDLETTER CLAYTON AS TRUSTEES OF THE KMJ TRUST, DATED DECEMBER 15, 2006 DATED JUNE 11, 2010 AND RECORDED JUNE 22, 2010 IN BOOK 569 AT PAGE 85.

CURRENT ADDRESS OF PROPERTY: 13132 Wilburn Park Lane, Fort Mill, SC 29715

TMS: 0006M-0A-261.00

AND IT IS SO ORDERED.

  
The Honorable Phillip E. Wright  
Special Referee for Lancaster County

Date: Nov. 17, 2010

Lancaster, South Carolina