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SC Court of Appeals

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

C/A NO.: 2020-CP-40-04879
2018-CP-40-03359

U.S. Bank National Association, as Trustee
for Credit Suisse First Boston Mortgage
Securities Corp., Home Equity Asset Trust
2006-4, Home Equity Pass-Through
Certificates, Series 2006-4,

**SPECIAL REFEREE'S ORDER
GRANTING MOTION FOR SUMMARY
JUDGMENT AND JUDGMENT OF
FORECLOSURE AND SALE DECREE**

Plaintiff,

(Non-Jury)

vs.

(Deficiency Demanded against Elliot Hayes
a/k/a Elliot D. Hayes, Jr. aka Elliot Hayes,
Jr., aka Elliot D. Hayes)

Elliot Hayes a/k/a Elliot D. Hayes, Jr. aka
Elliot Hayes, Jr., aka Elliot D. Hayes, South
Carolina Department of Revenue, Sterling
Hills Homeowner's Association, Inc., and
North Star Capital Acquisition, LLC,

Defendants.

(File No. 4016.10824)

RILEY POPE & LANEY, LLC
Attorneys for Plaintiff

Andrew S. Radeker
Attorney for Elliot Hayes a/k/a Elliot D. Hayes,
Jr. aka Elliot Hayes, Jr., aka Elliot D. Hayes
Kiera C. Dillon
Attorney for South Carolina Department of
Revenue

Pursuant to Rule 53 SCRPC, 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 case 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 Plaintiff's Motion for Summary Judgment on February 24, 2026, attended by attorneys for the Plaintiff and Defendant Elliot Hayes. Relevant documents were identified, offered, and received as exhibits to the affidavits filed by the parties in connection with the motion. Having reviewed the motion, the affidavits, and the exhibits, and having heard the arguments of counsel, I find, conclude and order as follows:

STANDARD OF REVIEW

Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law. Rule 56(c), SCRPC. "The evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." Fleming v. Rose, 350 S.C. 488, 493-94, 567 S.E.2d 857, 860 (2002). However,

the opposing party may not rest upon mere allegations or denials, but must respond with specific facts showing a genuine issue of material fact. *Id.* A grant of summary judgment is “completely appropriate when a properly supported motion sets forth facts that remain undisputed or are uncontested in a deficient manner.” *David v. McLeod Reg. Medical Ctr.*, 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006). Speculation and “inferential leaps” are insufficient to defeat a motion for summary judgment. *Nelson v. Piggly Wiggly Central Inc.*, 390 S.C. 382, 390, 701 S.E.2d 776, 789 (Ct. App. 2010). “The ‘mere scintilla’ standard does not apply under Rule 56(c).” *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463, 892 S.E.2d 297, 301 (2023). “[I]t is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.” *Id.*

FINDINGS OF FACT

- 1) The Lis Pendens was filed on June 26, 2018. An Amended Lis Pendens was filed on January 11, 2023.
- 2) The Summons and Complaint were filed on June 26, 2018.
- 3) Service was made upon the Defendants as shown by the proof of service filed herein.
- 4) The Defendants Sterling Hills Homeowner's Association, Inc. and North Star Capital Acquisition, LLC 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 on the Motion for Summary Judgment in this matter.
- 6) According to the affidavit filed herein, a good faith investigation did not determine that the Defendant Elliot Hayes a/k/a Elliot D. Hayes, Jr. aka Elliot Hayes, Jr., aka Elliot D. Hayes is in the military service and therefore entitled to protection under the Servicemembers' Civil Relief Act, 50 U.S.C. §3901 *et seq.*, or any amendments thereto.
- 7) For value received, Elliot D. Hayes, Jr. (“Defendant”) made, executed and delivered a note (“Note”) dated February 17, 2006, promising thereby to pay to the order of Aames Funding Corporation DBA Aames Home Loan the sum of One Hundred Thirty Thousand Five Hundred Seventy Five and 00/100 (\$131,575.00) Dollars, with interest at the rate of 11.530% per annum, with a current rate of 4.8750% per annum. Other terms and conditions are stated in the Note, which is of record herein. The Note was endorsed in blank on February 23, 2006. Plaintiff is in possession of the Note.
- 8) To better secure the payment of the Note described above, Defendant made, executed, and delivered to Aames Funding Corporation DBA Aames Home Loan a certain real estate mortgage (“Mortgage”) in writing, dated February 17, 2006, covering real property in Richland County located at 8 High Glen Court, Columbia, South Carolina 29229, 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 Richland County on February 27, 2006, in Book 1155 at Page 2577. Thereafter, by assignment recorded on September 11, 2012 in Book 1795 at Page 414, the mortgage was assigned to Plaintiff.

- 9) The Mortgage evidences and secures the repayment of money advanced by the mortgagee to, or on behalf of, the mortgagor and constitutes a purchase money first mortgage lien on the mortgaged premises.
- 10) 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.
- 11) The titleholder of record of the subject property as of the filing of the Lis Pendens in this action is Defendant, who is the original mortgagor.
- 12) Any notice required by the terms of the Note and/or Mortgage or by state or federal statutes has been given to Defendant prior to the commencement of this action.
- 13) Pursuant to paragraph 1 of the Mortgage, Plaintiff could require that Defendant make payments by certified check, bank check, treasurer's check or cashier's check if Defendant made any payment that was returned unpaid. Prior to Defendant's default on the loan, Defendant's payments made on July 31, 2017, August 31, 2017, and February 1, 2018 were reversed because Defendant's bank returned the payment as unpaid due to insufficient funds in his bank account. On each of Plaintiff's notices to Defendant of these returns, Defendant was informed that Plaintiff required payments by certified or guaranteed check once three or more payments are returned. Thus, as of February 8, 2018, Defendant was required to remit payments by certified or guaranteed check.
- 14) Defendant failed to make payments due and owing on and after January 1, 2018. On February 16, 2018, Plaintiff sent a Notice of Default to Defendant with an opportunity to cure the default by March 21, 2018. Although Defendant asserts that Plaintiff wrongfully returned payments he tried to make on March 27, 2018, March 28, 2018, and March 29, 2018, Plaintiff clearly had the contractual right to refuse these payments because they were not made by certified or guaranteed check. Furthermore, Defendant still had the right and opportunity to reinstate the loan pursuant to paragraph 19 of the Mortgage simply by resubmitting the payments in certified or guaranteed funds. However, Defendant presented no evidence of any effort to reinstate the loan with certified or guaranteed funds at that time. Instead, Defendant's subsequent attempt to reinstate his loan on June 27, 2018 was again not made by certified or guaranteed funds, and the amount of the attempted payment at that time was less than the amount needed to reinstate the loan. In summary, Defendant failed to put forward any evidence that he paid his arrearage on the loan by certified or guaranteed check as required by the lender in accordance with the terms of the Mortgage.

- 15) Within fifteen (15) days of the filing of this Order, Plaintiff's counsel may submit an affidavit of attorney's fees and costs. Plaintiff may also submit an affidavit in support of the "Escrow Balance at Loan Transfer" and "Corporate Advances" if it chooses to do so.
- 16) The amount due and owing on the Note, with interest at the rate provided in the Note, is as follows:

(a) Principal amount due as of January 1, 2018	\$130,698.54
(b) Interest from December 1, 2017 to February 14, 2026 at a current rate of 4.8750%	\$52,261.01
Per Diem Interest of \$17.46 from February 15, 2026 to February 24, 2026	\$174.60
(c) Advances	
Taxes	\$3,215.05
Insurance	\$3,769.92
(d) Late charges	\$44.57
Total debt secured by Note and Mortgage, including interest to date shown	\$189,989.09

- 17) 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 4.8750% 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.
- 18) The Plaintiff is seeking foreclosure of the mortgage and has demanded the right to a personal or deficiency judgment against Elliot Hayes a/k/a Elliot D. Hayes, Jr. aka Elliot Hayes, Jr., aka Elliot D. Hayes pursuant to Rule 71(b) SCRCF. However, Plaintiff reserves the right to waive the deficiency at the time of the sale.
- 19) The following Defendant(s) claim(s) 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), SCRCF. 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 lien(s) of record, including, but not limited to, a Tax Lien or Warrant for Distraint against Elliot Hayes,

Jr. bearing Tax Lien/Warrant No. 3-51255098-4, in the amount of \$557.62, dated April 1, 2011, and recorded on April 11, 2011 in Book 1677 at page 574 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 lien(s) of record, including, but not limited to, a Tax Lien or Warrant for Distraint against Elliot Hayes, Jr., bearing Tax Lien/Warrant No. 3-51973319-3 in the amount of \$1,015.33, recorded on September 22, 2017 in Book 2246 at page 140. Any such interest in or lien upon the said property is junior and subordinate to Plaintiff's mortgage.

Sterling Hills Homeowner's Association by virtue of any lien or enforceable assessments claimed as provided for in the Declaration of Covenants, Conditions, and Restrictions recorded herein, and any amendments thereto; including but not limited to a lien in the amount of \$1,381.12 recorded June 30, 2009 in Book 1534 at Page 1871. Also by virtue of the foreclosure action filed March 16, 2017, Case No. 2013-CP-40-06756. Any such interest or lien upon the subject property is junior and subordinate to Plaintiff's mortgage.

North Star Capital Acquisition, LLC by virtue of a judgment against Elliot D. Hayes in the amount of \$2,300.83 dated May 10, 2010 and recorded on June 29, 2009 in Judgment Roll No. 2009-CP-40-04583. Any such interest in or lien upon the property is junior and subordinate to Plaintiff's mortgage.

CONCLUSIONS OF LAW

Based on the foregoing, I find and conclude that there is no genuine issue as to any material fact in the case, and Plaintiff is entitled to judgment as a matter of law. Therefore, Plaintiff's Motion for Summary Judgment is GRANTED.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

- 1) The Plaintiff's Mortgage should be declared a purchase money 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 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.
- 3) Pursuant to Rule 53, SCRCP, this Order shall constitute a final judgment.
- 4) There is due to the Plaintiff on the Note and Mortgage set forth in the Complaint the sum of **\$189,989.09** as set out in the Findings of Fact *supra*. Within fifteen (15) days of the filing of this Order, Plaintiff's counsel may submit an affidavit of attorney's fees and costs. Plaintiff may also submit an affidavit in support of the "Escrow Balance at Loan Transfer" and "Corporate Advances"

if it chooses to do so. After reviewing any affidavits filed by Plaintiff or its counsel, the Court will issue a supplemental order setting forth and updated Total Debt.

- 5) 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 4.8750% 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 affidavit and shall be adjudicated by the Court without further finding.
- 6) The Defendants liable for the aforesaid judgment debt including interest at the rate of 4.8750% 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.
- 7) 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 Special Referee, at public auction, at 11:00 a.m. at the County Courthouse in Richland, South Carolina, 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:
 - 8) For Certified Funds: The Special Referee, will require, at the time of the bid, a deposit of 5% of the amount of the bid (in certified funds 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 thirty (30) 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 bidder(s).
 - 9) Interest on the balance of the bid shall be paid through the day of compliance at the rate of 4.8750%.
 - 10) Purchaser shall pay for any statutory commission on sale from the proceeds of sale, deed preparation, costs of recording the deed, and deed stamps.

- 11) A personal or deficiency judgment having been demanded, the sale will remain open for thirty (30) days pursuant to S.C. Code Ann. §15-39-720, (1976), unless demand for deficiency judgment is waived in writing prior to the sale.
- 12) The sale is subject to assessments, county taxes, existing easements, easements and restrictions of record, and other senior encumbrances.
- 13) The Special Referee, 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 thirty (30) days after the conclusion of the bidding, 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.
- 14) 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.
- 15) 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 Special Referee, only the amount of the costs and expenses crediting the balance of the bid on Plaintiff's indebtedness.
- 16) The Special Referee 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: If the proceeds of sale be insufficient to pay the amounts hereinbefore authorized to be paid out of said proceeds, with the costs and expenses, the Plaintiff's debt and interest, the parties hereto entitled to such deficiency have judgment therefore against Elliot Hayes a/k/a Elliot D. Hayes, Jr. aka Elliot Hayes, Jr., aka Elliot D. Hayes, pursuant to S.C. Code Ann. § 29-3-660, and such judgment will be entered without further notice or hearing.
NEXT: Any surplus should be held pending further Order of this court.
- 17) In the event the successful bidder is other than the Defendant(s) 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 Richland County is ordered and

directed to eject and remove from the premises the occupant(s) 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 (12 U.S.C. § 5220).

- 18) In the event the successful purchaser is someone 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 is 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.
- 19) In accordance with S.C. Code Ann. § 30-9-31, the deed of conveyance made pursuant to said sale shall be indexed by the Register of Deeds 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 Special Referee, who executes such deed as grantor.
- 20) 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.
- 21) The following is a description of the premises herein ordered to be sold:

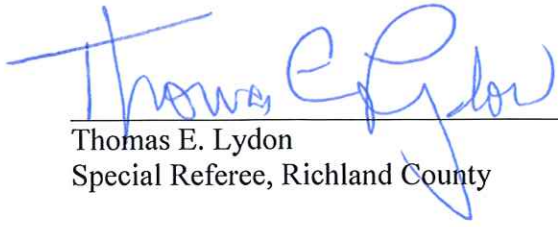
All that piece, parcel or lot of land with all improvements thereon, situate, lying being on the Southern side of High Glen Court, near the City of Columbia, the County of Richland, State of South Carolina, being shown and delineated as Lot 66 on a plat of Sterling Hills, phase three prepared by Belter and Associates, Inc. dated February 18, 2000, revised April 26, 2000 and recorded in the Office of the Register of Deeds for Richland County in Record Book 407 at page 1490, Said lot being more particularly shown on a plat prepared for Dana C. Purdie by Belter and Associates, Inc. dated October 9, 2000 and recorded in Plat book 451 at page 988; reference being made to said latter plat for a more complete and accurate description, all measurements being a little more or less.

Being the same property conveyed to Elliot Hayes by Deed of Tracie L. Gebrosky and Kenneth M. Gebrosky, dated February 21, 2006, recorded February 27, 2006 in Deed Book 1155 at page 2575 in the Office of the Register of Deeds for Richland County.

TMS No. 23104-02-57

Property Address: 8 High Glen Court, Columbia, SC 29229

AND IT IS SO ORDERED.



Thomas E. Lydon
Special Referee, Richland County

March 17, 2026
Columbia, South Carolina